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LACEY ACT AMENDMENTS OF 1981—OVERSIGHT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

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LACEY ACT AMENDMENTS OF 1981—OVERSIGHT

TUESDAY, JUNE 26, 1984

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
Washington, DC.

The subcommittee met at 9:30 a.m., in room SD-406, Dirksen Senate Office Building, Hon. John H. Chafee presiding.

Present: Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning. Today's hearing addresses a topic that this committee examined in detail in 1979, 1980, and again in 1981: Use of the Lacey Act to control illegal international trade in fish, wildlife, and rare plants.

The Lacey Act was one of our first Federal wildlife laws, passed in 1900 to outlaw interstate traffic in birds and other animals illegally killed in their state of origin. It was aimed at the so-called pot hunter, those people who killed large amounts of wildlife for sale. The act was amended several times and its coverage was expanded to include wildlife taken in violation of foreign law as well as State law.

When we first looked at this issue in 1979, we heard testimony from witness after witness about the massive volume of illegal wildlife that was being imported and smuggled into this country. The techniques used by these criminals and the profit margins earned have both been likened to the illegal drug trade. Sophisticated fraud is often involved. Frequently, our domestic interests are directly and adversely affected by, for example, outbreaks of Newcastle's disease that threaten our poultry industry.

Effective enforcement and control of this illegal trade not only makes sense, it is also our responsibility. Most of the wildlife and wildlife products entering the United States come from developing nations. As one of the most advanced nations and the largest consumer of wildlife and wildlife products, we must assist countries that have limited resources to enforce the laws protecting their native wildlife. The large volume of illegal trade and its drain on wildlife resources worldwide is a problem shared by both source and consumer nations. Stopping it depends on international cooperation, including enforcement of trade controls at both ends of the chain of commerce.

In 1979 we learned that the United States was not fulfilling its enforcement responsibilities. We discovered that the Lacey Act was

c tdated and contained too many barriers to effective prosecution. After many hours of long, hard work, the Lacey Act Amendments of 1981 were enacted into law. They were designed to remove many of the obstacles to prosecution; penalties were increased to offset potential profits, and new tools, such as strict liability forfeiture, were given to the Federal Government to improve enforcement.

Which brings us to today. Almost 3 years after the 1981 amendments became law, there are reports that not much has changed. Business as usual, institutional inertia, an unwillingness or inability to put together the tough, paperwork fraud case appears to be the order of tne day. If this is true, I want to know why. If it is not true, I want to see that our efforts in 1979, 1980, and 1981 have produced something more than just another law on the books.

Many groups, several which are represented here today, have examined the Government's enforcement record for the past few years and have found it wanting. Although Government statistics show an increase in the number of cases and convictions, there is more to effective enforcement than impressive statistics. The World Wildlife Fund-U.S. has noted several instances where clear violations of foreign law have gone unnoticed by government officials. Mr. Meyers from the Pet Industry Joint Advisory Council raises a number of serious allegations regarding the conduct of Government agents and the mismanagement of our enforcement program.

We will hear today from these witnesses and others how they believe the Government can improve in what is admittedly a tough job. Most of the ideas and proposals were first presented when these people testified in 1979. They made sense then and they make sense now. Some of the recommendations have recently been adopted or endorsed by the Government. This is encouraging but I want assurances that we are ready to press forward and produce results—not just another series of headquarter directives and memoranda of understanding.

A poor enforcement record will fail to deter those who deal in illegally obtained wildlife and will offer little incentive for importers to learn the trade prohibitions of foreign countries. Recognizing the tough job that is facing us, I want to make it clear to our Government witnesses that we are here to help.

Enforcement is a high priority with this Senator and if you need help, if you have identified particular problem areas, you need to let me know. We will do what we can do to cure the problems. We will do our part but you must also do yours. I will ask each of you to go back after this hearing to examine the testimony of the witnesses who are appearing after you. For the record, you are requested to respond to the specific allegations and to comment on the specific recommendations made by these witnesses.

The Government is going to be our first witness, they are going to tell us what they are doing. After them will come Russell Train from the World Wildlife Fund-U.S. and then Mr. Meyers and the others who, as you can see, will be making allegations the Government isn't going to do a good job. We hope the Government will respond in writing to those allegations.

Let's have our first panel.

STATEMENT OF CRAIG POTTER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY CLARK R. BAVIN, CHIEF, LAW ENFORCEMENT, FISH AND WILDLIFE SERVICE

Mr. POTTER. Thank you, Mr. Chairman. We are pleased to be here this morning. We are here to try to explain the progress that we have made in implementing the Lacey Act Amendments of 1981. I also have with me at the table Mr. Clark R. Bavin who is the Chief of Law Enforcement for the U.S. Fish and Wildlife Service.

If it is all right with you, I would like to submit my full statement for the record and present a summary.

Senator CHAFEE. All right.

Mr. POTTER. Although the Lacey Act Amendments of 1981 have been extremely effective against illegal interstate commerce in fish and wildlife, I will focus my remarks this morning on the illegal international wildlife trade as was requested in your letter.

In order to have an appreciation for the illegal wildlife trade, it is necessary to have an understanding of the volume of wildlife imported and exported. The United States has long been recognized as a major consumer of wildlife and wildlife products. The latest complete records are from 1982. We have indicated that there were 53,912 wildlife shipments imported or exported and over 242 million individual items that cleared. This volume of wildlife shipments tells only part of the story. The value of the traffic is equally outstanding. The total value of wildlife imported into and exported from the United States in 1982 was over $756 million.

The U.S. Fish and Wildlife Service employs 36 wildlife service inspectors to monitor trade and interdict illegal activity. In 1982 these inspectors physically inspected portions of 14,443 of the wildlife shipments imported and exported. They seized 1,457 of the shipments inspected.

These seizures involved over 1 million individual items of wildlife or wildlife products. While these seizures indicate a level of illegal activity detected, we are confident that a significant volume of illegal wildlife trade still enters the country. We know, for example, that many illegal shipments enter and leave the country without proper declaration and thus are smuggled. We believe there are still as many as 25,000 illegal psittacine birds entering the country each year across the Mexican border. The exact extent of illegal wildlife smuggling is impossible to assess, although we believe that it is still a significant problem.

Mr. Chairman, if I may, let me turn to a discussion of our investigative activity.

Criminal convictions under the Lacey Act Amendments of 1980 and 1981 were 95 and 136 respectively. After the Lacey Act Amendments became effective, criminal convictions rose to 221 in 1982 and 271 in 1983. This is an increase of over 100 percent.

Criminal penalties imposed totaled $125,512 in 1980 and 1981. Whereas in 1982 and 1983 they amounted to $221,414, which is an increase of almost 100 percent. Similarly, civil penalties imposed by the Department of the Interior amounted to $13,010 in the 2 years preceding the Lacey Act Amendments, and $81,581 in the 2 fiscal

years following enactment of the amendments, which was an increase of over 500 percent.

Senator CHAFEE. Craig, I am looking at the attachment D, is that right?

Mr. POTTER. Yes, sir.

Senator CHAFEE. These charts are always difficult to follow because you don't know the exact circumstances, 1982 was the big year. Was that the year that you had the scam? I am looking at the criminal actions where the fines were over 1 million.

Mr. POTTER. Yes, sir.

Senator CHAFEE. Whereas the next year it dropped off and your high water mark was at least in jail years and fines in 1982 but then it dropped in 1983. Any particular reason for that, Craig?

Mr. POTTER. I don't think it is related to scams. I think we also had those last year. We have had them every year. Maybe Mr. Bavin can address that. I do know this is total caseload. It is difficult, however, to know the exact circumstances in the context of these total figures. We are increasing our computer capability significantly so in the next year we hopefully will have more detailed information about criminal actions taken under the the Lacey Act.

Senator CHAFEE. What does it include in the Lacey Act?

Mr. POTTER. This includes everything. There is another chart that precedes attachment D. It gives a breakdown of 19 different classifications of law enforcement activities. I understand your difficulty with these charts. I had some difficulty myself learning them, but I think I understand them a little bit.

The Lacey Act is classification No. 4.

Senator CHAFEE. Go ahead.

Mr. POTTER. I wanted to point out a significant figure. It is the jail time that has been imposed since the amendments were passed. In the 2 fiscal years before the amendment, total jail sentences imposed for criminal convictions amounted to 9,053 days. In the 2 years following the amendments, jail sentences amounted to 27,357 days, which was an increase of over 200 percent.

Moreover, since the amendments became effective, we have convicted 29 additional individuals for felony violations. That brings the total defendants convicted of felonies to 54 as of today. Of these, 22 defendants were convicted of violations involving foreign species and 32 defendants were convicted of violations involving native species.

There have also been several major investigations involving foreign wildlife. They can be directly related to the amendments.

In November 1983, over 100 palm cockatoos were seized by the Service which had been illegally exported from Indonesia, the country of origin, and then imported into the United States from Malaysia in violation of the Lacey Act. The importers admitted civil liability and forfeited the birds which were worth over $900,000.

In southern California investigations have resulted in felony charges against 29 defendants involved in illegal importation of psittacine birds. Nineteen of these defendants have been convicted of Lacey Act felony violations. These resulted in the seizure of 777 psittacine birds valued at $400,000 on the U.S. market.

In 1983 a total of more than 690,900 items of oriental medicines containing ingredients from endangered rhinoceros and tigers were seized from containerized shipments in New York. The total value of these seizures was over $710,000.

In August 1983, the Service seized 674 caiman hides imported by a Massachusetts firm. The hides were documented as being from the common caiman. Examination by our experts revealed that the hides were actually from the yacare, an endangered species. The estimated value of these hides was $30,000.

Recently, four shipments of blue coral from the Philippines with a retail value of over $1 million were seized under the Lacey Act at the Port of New York.

Senator CHAFEE. Mr. Potter, do you have a time problem this morning?

Mr. POTTER. Yes, sir.

Senator CHAFEE. What time?

Mr. POTTER. I have a State Department meeting at 10 o'clock.

Senator CHAFEE. I have some questions.

What happens when these birds are forfeited, like the 100 palm cockatoos that were forfeited and exported from Indonesia, what do you do with them?

Mr. POTTER. I have to ask Mr. Bavin what happens to them.

Mr. BAVIN. Senator, they become the property of the Government. These particular palm cockatoos are not an endangered species. They came into the country in violation of the Lacey Act. They are on appendix 2 which means they could with proper documentation, legally be sold in commerce.

The Government right now is negotiating with the institutions that are holding the birds for us to work out some type of arrangement for settlement. Most likely we will be selling the birds to people who are interested in breeding them. We are trying to arrange for a breeding consortium so these birds can be perpetuated in captivity.

Senator CHAFEE. Mr. Potter, you have seen some of these questions. On December 7 of last year, Mr. Russell Train from World Wildlife Fund-U.S. wrote to Secretary Clark to outline various enforcement problems. What was your response to that?

Mr. POTTER. I am not absolutely familiar with the response that went out. I think there was a response sent out but I am not sure. I believe we did have a statement that we drafted earlier when you had earlier hearings scheduled. We did send that statement. But, we have subsequently altered the statement considerably. I think there has been a good deal of discussion with World Wildlife Fund. I personally have had some discussions with them since that time. We are presently trying to work more closely with World Wildlife Fund in terms of integrating the information available on what has occurred since the 1981 amendments.

I think that part of the problem is the difficulty in understanding our law enforcement effort as it relates to the Lacey Act amendments in the greater context of our many other law enforcement activities. We are now putting on line a new computer system to more specifically deal with Lacey Act problems and separate out Lacey Act information.

Senator CHAFEE. I know that you mentioned in your testimony about this new computer system which I understand is to store wildlife trade information.

Mr. POTTER. We are going to put a good deal of information on computer that we have not had before. We will have terminals at all the ports of entry.

Senator CHAFEE. So you can help your port agents?

Mr. POTTER. Yes, sir, that is correct.

Senator CHAFEE. In your testimony you talk about the U.S. Fish and Wildlife Service continuing to consider the conservation and management of native species as our primary concern.

When you think of the world's endangered species and, as you know, most of the species listed under CITES are foreign species, it seems to me you are a little parochial when you say "protecting native species" as your primary concern. I would think, yes, you want to have a concern, but if you are really worried about endangered species, taking a worldwide view, the foreign species would be of great importance and concern also.

Mr. POTTER. I certainly can't deny that. I think the point that we are making is that we have much more control over our domestic activities and we are better able to deal with those problems. One of the difficulties we have in enforcing foreign laws, for example, is that we are not always absolutely certain what the foreign laws are.

Senator CHAFEE. I think it is a problem but you have the CITES list to work with.

Mr. POTTER. We have the list provided by the CITES Secretariat. However, we don't always get the actual statutory references. We work with CITES as best we can. I think we do need to do a better job in terms of understanding the laws and keeping up with them. There is always going to be a certain lagtime.

Senator CHAFEE. What my desire is is that the United States really be a leader in this. We are a wealthy nation, we have the tools, we are the consumer. It is the pressure from the United States that is causing the imports to occur. Our people want to spend money and are willing to circumvent the law, be it our law or foreign law. I think it behooves us to take a very vigorous position in protecting species from other nations from being endangered or going from threatened to endangered or even being threatened.

Mr. POTTER. We realize that and we agree. We are aware that this Nation is a consumer nation. We are taking efforts to address that. We have a new outreach program underway to increase the information available so that our buyers are more aware of problems. We are looking now at user fees which will probably help put more people at the field level. We are hopeful that we can increase the awareness of the problem in this country. I think, in general, there is much more cooperation in that regard.

Senator CHAFEE. In this business there must be a few big professional violators. It seems to me that this is going to require the use of informants, extremely arduous investigatory work, just as we work on the drug cases.

Do we do anything like that? And how is your cooperation with the Department of Justice?

Mr. POTTER. I think our cooperation is very good. I want to say that in that area, in particular, we have recently increased our efforts to try to use informants and other highly sophisticated investigatory techniques.

Mr. Bavin may want to respond more specifically.

Mr. BAVIN. I think we do.

Senator CHAFEE. Go ahead.

Mr. BAVIN. I don't know if there is anything I can add. We do use informants. We use undercover techniques. We have set up a number of sting-type investigations where Government agents get in the middle of the buying and selling of wildlife in order to gather evidence against perpetrators. The fact that we have 54 Government convictions under Lacey is evidence that we are going after hardened criminals. These people require a good deal of culpability in order to be guilty of these violations.

Before the Lacey Act amendments, such violations were not felonies. These are wildlife crimes and we think it is a record to be proud of and I think it is a deterrent against these people to do business in the United States.

Senator CHAFEE. You are getting indications it is a deterrent, we are making headway?

Mr. BAVIN. It is difficult. Every time we turn over a new rock we find something. It is difficult to assess a criminal problem. You don't have the victim reporting the violation. It is a violent crime. We don't really know how much is really there that is illegal. I am sure we have had some effect but there is certainly a lot more to be done.

Senator CHAFEE. What recommendations do you have, Mr. Potter, for this committee?

Mr. POTTER. I think we are in a mode now, Mr. Chairman, of really beginning to get stronger enforcement efforts underway following the amendments. We have had a problem with the computer and the information available to enter into the computer. I think we are addressing that. We are serious about this outreach effort. The law has been significantly strengthened to the credit of this committee and particularly to you and we are taking steps now to cooperate more thoroughly with World Wildlife Fund and others who are involved in this problem. We recognize we have a serious problem; there is no question about that. I think at this time we would like to wait about a year and see how this new computer system works. It is going to take a while to get that on line. We don't have really detailed information for 1983. We are not trying to hide the fact there is a problem, but we are trying to get up to speed to deal with it.

Senator CHAFEE. Didn't the House Appropriations Committee give you 24 agents?

Mr. POTTER. Yes, sir.

Senator CHAFEE. Is that for the 1985 budget?

Mr. POTTER. I think so, yes, sir.

Senator CHAFEE. How are you going to use them?

Mr. POTTER. Primarily I think in the international area, Mr. Chairman.

Senator CHAFEE. How much of your 200 agents are assigned to regions where the importations occur?

Mr. POTTER. I would have to defer to Mr. Bavin.

Mr. BAVIN. Senator, I can't really answer specifically. Imports occur at 300 and some Customs ports throughout the country. There are only certain ports that are designated for wildlife importation but that doesn't preclude them from coming in. They can come in illegally. Our 200 agents are stationed throughout the United States as well as Alaska, Puerto Rico, Hawaii, and Guam. We do have major concentrations of agents at the main ports of supply, such as New York, Miami, Los Angeles, Chicago, and so on. These agents, however, work the entire range of investigative activities. We do not have agents that just work Lacey Act cases per se.

Senator CHAFEE. When you take a case like you had a year ago, Mr. Potter, with the cayman hides imported by a Massachusetts firm and it turned out they were hides from the Yacare, what happens to that importer?

Mr. POTTER. To the importer?

Senator CHAFEE. Yes.

Mr. POTTER. I am not sure what the disposition of that case was. Perhaps Mr. Bavin can respond more specifically.

Mr. BAVIN. I believe, sir, that case is still pending.

Senator CHAFEE. But it has not yet come up?

Mr. BAVIN. To my knowledge, it has not been adjudicated.

Senator CHAFEE. The coral shipment from the Philippines, we covered coral in the 1981 amendments, didn't we?

Mr. BAVIN. Yes, sir.

Senator CHAFEE. Why don't you summarize your view?

Mr. POTTER. I think we have had a good discussion here of the general situation. We are in the process now of trying to address a major problem in this country. We recognize that it is going to be a continuing problem and it is a serious one. We do have this new computer system. We are looking at additional improvements like user fees.

Senator CHAFEE. This is for a license to import?

Mr. POTTER. This would be a fee that would be charged for processing incoming shipments at ports of entry.

Senator CHAFEE. $25?

Mr. POTTER. $25 fee. I don't think there is a lot of opposition to that. I think it has been accepted in the community as a cost of doing business.

Senator CHAFEE. What happens to that fee? Would that go into the General Treasury or would you keep it?

Mr. POTTER. That goes back to our agency for paying costs. It is used to help enforce Lacey Act activities or will be if it becomes the rule. We do need to understand better than we do foreign laws and we are hopefully going to be able to do that as a result of access to more detailed information. We, as I mentioned, are going to have the computer terminals available at ports of entry which should aid our people significantly in terms of dealing with shipments coming in. We have made, as I indicated in my statement, an attorney available now to work with World Wildlife Fund in terms of understanding more specifically what the foreign laws are. I don't think it is a full-time activity of this attorney, but it is a new position that has been created. Our contacts with those who are con-

cerned about this problem are increasing and our outreach efforts are increasing significantly.

I think you also are going to see some undercover operations which hopefully will function as a greater deterrent.

I am told, and this may be of interest to you, that we are in the process of making a major announcement of an undercover operation and you may want to keep the hearing record open so that we can make a statement in that regard.

Senator CHAFEE. The final question. You refer to a case not quite a year ago of black palm cockatoos where you seized 100 of them. Was that the case in Miami where you ended up having to pay the importer $45,000?

Mr. POTTER. Yes, sir, that was it.

Senator CHAFEE. What went wrong?

Mr. POTTER. I am not familiar with the details of that.

Mr. BAVIN. Mr. Chairman, I would like to have you ask the Department of Justice that question. The U.S. attorney that handled the forfeiture action for us in Miami and the Justice Department here in Washington negotiated the settlement with the defendants. We are mainly the investigative agency. We collected the information and conveyed it to them. I think they are in a better position to answer how the settlement was derived.

Senator CHAFEE. Was it an improper seizure and the Government had to make the settlement?

Mr. BAVIN. No, sir. It is under the Strict Liability Forfeiture Provision of the Lacey Act, but the Government still has to prove a violation of foreign law in order to prosecute. In this particular case, the defendants' lawyers negotiated with the U.S. attorney's office and arrived at a settlement involving the return to the defendants of $45,000 in exchange for their giving the birds to us and admitting civil liability.

Senator CHAFEE. Thank you very much, Mr. Potter. You go along and we will continue with the others. Why don't you stay here, Mr. Bavin.

Mr. Habicht, why don't you come up. Go ahead with your testimony.

STATEMENT OF F. HENRY HABICHT II, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DONALD CARR, CHIEF, WILDLIFE AND RESOURCES BRANCH, DEPARTMENT OF JUSTICE

Mr. HABICHT. Thank you, Mr. Chairman. I have a longer statement we submitted and I would like to have entered into the record and in lieu of reading that entire statement, I would summarize the highlights of some of the legal issues we have encountered and some of the problems we are working on with our client agencies in the area of the Lacey Act enforcement.

Mr. Chairman, I appreciate you having me here today to discuss the enforcement of the Lacey Act. In the Land and Natural Resources Division of the Department of Justice we have a section devoted to wildlife and marine resource litigation. Our Wildlife Marine Section litigates under the Lacey Act, the Endangered Spe-

cies Act, Marine Mammal Protection Act, Magnuson Fishery Conservation and Management Act, Airborne Hunting Act, Wild and Free Roaming Horses and Burros Act, and a score of other statutes. But of all these statutes, the most effective since the 1981 amendments is the Lacey Act.

In the area of international enforcement, we are committed to working with our client agencies, particularly the Fish and Wildlife Service and the Customs Service, to develop a strong deterrent message and we are committed to be a leader in dealing with the many issues presented in the enforcement area.

Senator CHAFEE. Why do you state the Lacey Act is the most effective?

Mr. HABICHT. It has the broader scope. In the 1981 amendments, for example, not only did it increase the array of enforcement tools that we have and penalties that we could impose, ranging from the strict liability, forfeiture provisions to very strong felony provisions, but it eased in a significant way the standard of proof that we have to show when we are dealing with general intent or specific intent crimes. There are concerns which I am prepared to outline with regard to proving foreign laws. That is something we are dealing with and that is still a difficult part in international area.

Senator CHAFEE. All right.

Mr. HABICHT. The statistics show that our division working with the client agencies and U.S. attorneys' offices have obtained 271 criminal convictions in fiscal year 1983 and 221 in fiscal year 1982 compared to 95 and 136, respectively, in fiscal years 1980 and 1981.

Overall, we filed nearly 1,500 Lacey Act cases in fiscal years 1982 and 1983. While these involved fewer prosecutions in total number than the prosecutions initiated in 1980 and 1981, the trend is clearly toward larger and more complex prosecutions with significant results, particularly with regard to penalties and forfeitures.

The 1981 amendments provided us with enforcement tools to combat the illegal wildlife trade. We are putting these to work in several high-visibility cases. The Fish and Wildlife Service seized shipments of exotic black palm cockatoos. These birds, worth $5,000 to $10,000 or more on the American market, arrived in Los Angeles and Miami in late September. These shipments amount to 100 birds with market value between $½ million and $1 million. The Miami birds carried papers indicating that they came from Indonesia and were reexported through Malaysia and Singapore. And civil penalties were assessed, when we were able to make a conviction showing that the law of Indonesia prohibits their export for commercial purposes.

With regard to resolution of that litigation, I think it is important to note for the record that while some money was returned, in fact the Government recovered approximately 90 to 95 cents on the dollar with regard to the value of the shipments in issue in that litigation in Florida.

The kind of enormous profits that are suggested by the trade of black palm cockatoos indicates that we are dealing with sophisticated trafficking organizations. We are presently fighting another round of litigation with these importers, who apparently have another 85 birds now in Singapore which they wish to bring here to market. They are claiming in an action in Florida that the Lacey

Act is unconstitutional citing notice aspects of the penalty provision and also challenging the legality insofar as the Lacey Act bars importation of wildlife in which the importers have valid CITES reexport permits from Malaysia. Their theory is that if wildlife can be removed from its country of origin, albeit in violation of that nation's law, and if a reexport permit can be gotten from a third country by whatever means, we cannot bar its importation under the Lacey Act.

Senator CHAFEE. That is a very unusual theory of law. If the wildlife can be removed from its country of origin, albeit in violation of that nation's law—what do you mean "can be removed"? You mean physically taken?

Mr. HABICHT. Physically. This is quite a gutsy approach by these importers. They are raising a combination of a constitutional void for vagueness lack of notice argument about the act because it imposed on people an obligation to understand foreign law. We understand the old maxim that ignorance of the law is no excuse but they are raising a sympathetic case and trying to interpose the protection of international trade and endangered species. They are saying that this international regime supersedes the laws of individual nations and, of course, it is clear that individual nations can pass laws that are more strict than that provided by the convention.

We are endeavoring in litigation such as this to write good strong law into the Lacey Act. In other environmental statutes we see various sorts of challenges—both constitutional and others. We take these sort of challenges particularly seriously.

Senator CHAFEE. Anna Marie's I assume is the importer?

Mr. HABICHT. Yes, sir.

Another important area of development in international wildlife trade came in 1983 in the litigation of *U.S.* v. *Slocum*. This points up the public health aspects and public health importance of strong international wildlife enforcement. In that case the importer and his family hid exotic birds which died of Newcastle's Disease while in the quarantine station. He has been sentenced to a jail term and he actually made a claim against the Department of Agriculture for indemnity given the fact that his birds had died in quarantine even though they had been imported illegally. We are wrapping that up as well. That was an important case because it involved public health aspects.

We also have concluded several forfeiture proceedings and had some successful litigation in recent weeks and months. One forfeiture action involved cockatoos imported from Indonesia. Only a few weeks ago certain exporters of cayman crocodiles from South America were convicted by a jury. Sentencing at this point remains to be instituted but it could range to a maximum of 14 years in prison and $280,000 in fines.

We have had some setbacks as we litigate and develop cases in the international area. The felony cases, as I mentioned, are not always easy ones to make because proof of the defendants' actual knowledge of the underlying foreign law is an essential prerequisite. The importer is often shielded by brokers and other middlemen and he can argue he was not aware of any irregularity. He may point to the reexport process, as was the case of the black

palm cockatoos, and other types of documents, thus making our proof of actual knowledge difficult.

This makes us careful in selecting cases, particularly in the early going so we have good fact situations to make the best possible case. Forfeiture proceedings are not always automatically successful. One example is the *U.S.* v. *707 Birds,* where we were quite confident that the birds' Paraguayan export permits were false. We seized the birds and instituted a forfeiture action. We were subsequently unable to obtain in time required affidavits from Paraguayan officials regarding Paraguayan law, and our motion for partial summary judgment was defeated.

I am certainly committed to do what we can in the Department and I know Interior is, to avoid that from happening again.

Senator CHAFEE. I think it would be hard to get an answer from Paraguay as to what the law is. How do you proceed? How do you write them and ask them?

Mr. HABICHT. We proceed through diplomatic channels. The best way is to get affidavits from a responsible foreign official.

Maybe Mr. Carr can answer.

Senator CHAFEE. Your name?

Mr. CARR. I am Donald Carr, Chief of the Wildlife and Resources Branch, Land and Natural Resources Division, Department of Justice.

Senator, we try to proceed on a two-track scheme to obtain proof of the foreign law, both through our State Department here and our embassy abroad as well as by direct contacts with officials of the foreign government. This, nevertheless, does not always guarantee timely or immediate results.

Mr. HABICHT. As I mentioned, Mr. Chairman, we have had good cooperation from a number of countries. Cooperation is improving. With regard to South American and Asian countries, we need to work on. We do whatever we need to do to enhance cooperation and enhance our ability to prove foreign law in short order. We hope to follow through our Attorney General's efforts in law enforcement to promote mutual assistance with foreign governments. I am very optimistic. We are working with foreign agents. We are working with Interior in dealing with foreign laws. There are a number of reasons for being optimistic. Our delegation to the 1983 Convention on International Trade in Endangered Species in Botswana secured passage of a recommendation to the parties to ensure that the Secretariat be supplied not only with notices of changes in countries' wildlife laws, but with the full text, the official citations and the government officials responsible. This should ease our ability to prove foreign law in these cases.

I am especially pleased to announce today that the Department of Justice will support with both money and personnel efforts an important project proposed by the World Wildlife Fund to compile a bank of reliable and current information about the wildlife trade laws of the principal exporting countries. It will include expert summaries of the Latin American, Caribbean, African, Asian, and Oceanian countries' laws, as well as rosters of responsible officials so that any small points of controversy or interpretation may be resolved. This will be an invaluable addition to our bank of knowledge and legal resources. We intend to follow up with our personal

efforts to make sure that information is translated into readily usable information as Interior is dealing with Customs agents and with our prosecutors.

We believe that this sort of project will greatly advance the cause of international wildlife protection.

We are also working with Interior in the development of other enforcement policies which appear to hold promise, such as their system of advance notice to importers with regard to some clearly illegal categories of wildlife trade.

The whole education process which the World Wildlife Fund is doing is an excellent job of advancing and informing the regulated community and will help to provide a deterrent to those who may be on the fence with regard to whether they try to violate the law or not. We will also inform the consuming public they should be wary of buying certain types of wildlife species which are in fact in violation of foreign law. We also are pursuing other sorts of reject-and-return-to-country-of-origin objects of shipments which we believe are unlawful at port of entry.

Senator CHAFEE. Let me go back to that point you were making; policy refusal of shipments considered to be illegal, with a requirement that they be returned to the country of origin. Aren't you returning the endangered birds or are they dumped somewhere? The birds will never in fact be returned?

Mr. HABICHT. Mr. Chairman, that is one of the most significant concerns we want to be sure we address before we actually implement. There are actually legal channels to summary procedures that we are looking at. I think we need to have protection but theoretically only a few shipments would be at risk. If this were an effective process, the message would be sent out quite quickly and it would be hard for importers to continue to try to bring the shipments in. The protection of those first shipments under the policy would be something we have to be sure, working with our client agencies, could be protected.

I would just mention, because a number of legal issues overlap, that the Lacey Act is used domestically to control interstate shipments of wildlife and wildlife products, including strict liability forfeiture and enhanced penalties domestically and we are endeavoring to make good law which affects all traffickers domestically and internationally.

The public health element is strong with regard to domestic enforcement as well, which is something that we take seriously.

Our first prosecution under the act was *United States* v. *Murphy and L'Heureaux*, in 1983. We convicted certain defendants who were trafficking in contaminated shellfish. The *United States* v. *Venancio* case involved the hospitalization of over 100 people who consumed the shellfish.

It is important to police these kinds of cases, particularly when the public health is involved.

Senator CHAFEE. Does airborne hunting fall under a separate statute?

Mr. HABICHT. It falls under a separate statute. There is a separate statute that deals with airborne hunting. The Lacey Act is sufficiently broad in scope that it is an available tool to prosecutors in airborne hunting as well as the Airborne Hunting Act and that is

something where there is more than one Federal statute involved and it doesn't mean we will rule out the Lacey Act if it made sense from a prosecutorial standpoint.

I will summarize that we have had a number of very significant prosecutions recently in the international area and domestically. I think that Mr. Bavin and his agents in the Fish and Wildlife Service and our colleagues in the Customs Service, Mr. Potter and Mr. Arnett and Secretary Clark, have shown a great interest in this and the Attorney General today has expressed strong support for our efforts to really pull together what we have learned, particularly with regard to the international problems in the area, to draw on the experience we have had in litigation both in domestic enforcement and international enforcement. There have been a number of legal challenges logged both in proof of foreign laws and constitutional issues. This is a time for us to draw on what we have learned, to put a team approach together with regard to dealing with the enforcement agencies involved, and to educate the public and regulated community as well as our prosecutors and agents.

Senator CHAFEE. What recommendations do you have for us?

Mr. HABICHT. My recommendation would be that I think that the law does not require change at this point. I am very optimistic given the work that we have done both in consultation with our clients and the World Wildlife Fund that we can work with foreign governments, get better cooperation with foreign governments, get a better system of information so our agents have an easier job of spotting illegal shipments, our prosecutors can dispose of these cases quickly. We have cause over the next couple of years to believe that we can actually put a significant dent in the trade.

Like our colleagues in Interior, observing closely what happens over the next few years, and from the committee standpoint anything that you can do to encourage international cooperation, like the Attorney General is doing, Secretary Clark and Mr. Train is doing with the World Wildlife Fund to raise the consciouness and help educate the public, I think the law is a good and effective tool and we can deal with it.

Senator CHAFEE. How is your interagency cooperation working out, you and Interior?

Mr. HABICHT. I have been very pleased. As I mentioned, the Fish and Wildlife Service, Mr. Arnett's office, and Mr. Clark Bavin and his people have worked with Don Carr's prosecutors both in undercover operations and other prosecutions by setting up a system where there is communication well before a case goes to grand jury or goes to court.

That is important. In the past there were often problems in Justice Department not getting involved until late in the process. I think by our people being very interested and aggressive and Interior people and Customs——

Senator CHAFEE. How do you get along with Customs?

Mr. HABICHT. My experience has been good on that.

Mr. CARR. Senator, I am sure that we have made some considerable progress over the past several years given the various constraints that all of the agencies have. Customs has several overriding constraints, perhaps they will testify to that this morning. They have a complete wealth of priorities.

Senator CHAFEE. You mean because they have so many demands on them such as drugs?

Mr. CARR. High technology, currency, imports, and the like.

Senator CHAFEE. In your testimony you talk about inspection of the port being the key to international commerce.

Mr. HABICHT. Yes, sir.

Senator CHAFEE. And you have only 35 inspectors. Isn't advance information informants, careful investigation terribly important if you are going to get very far in this business?

Mr. HABICHT. I think the advance information, the dissemination of information, and the use of informants is extremely helpful and important in making the big case. I think there is a leverage factor involved in my perception of the trade, a leverage factor in the sense that a few good large seizures and prosecutions with very severe fines can have a dramatic impact on the overall scope of the trade because I do think there are people who will be deterred, a substantial group of people will be deterred when they see a number of high visibility prosecutions and a big part of that is just having the information available and targeting those kinds of prosecutions.

Senator CHAFEE. I think you are going to get those?

Mr. HABICHT. I believe we are going to have some—we have already had some significantly large seizures such as 1 million dollars' worth of cockatoos and I think there will be some significant ones coming up in the future.

Senator CHAFEE. Thank you.

Mr. Habicht, the other witnesses aren't going to be quite as sanguine about your performance as perhaps you have been. So, we would like you to respond to their allegations which we will send you either from the record or from their printed statements. If you would respond, we would appreciate that.

Mr. HABICHT. We will be happy to.

Senator CHAFEE. They might be cheerleaders for you but I suspect not.

Mr. Logan, you may begin.

STATEMENT OF WILLIAM R. LOGAN, DIRECTOR, OFFICE OF INVESTIGATIONS, U.S. CUSTOMS SERVICE

Mr. LOGAN. Thank you, Mr. Chairman. I would like to thank you for inviting me to testify today on the role of the U.S. Customs Service in enforcing the provisions of the Lacey Act.

I also have a prepared statement for the record. I would like to summarize as best I can.

Senator CHAFEE. All right.

Mr. LOGAN. The Customs Service has been responsible for enforcing or assisting in the enforcement of the fish and wildlife import and export laws since the turn of the century. In the late 1970's, as a result of the increased trade in the illegal trafficking of wildlife, Customs designated enforcement of the wildlife laws as a high priority national program. This resulted in a significant expansion of the enforcement efforts expended by U.S. Customs officers in both the United States and our overseas offices.

These efforts resulted in increased seizures of smuggled wildlife, especially of psittacine birds, from various parts of the world, but primarily from South and Central America and Asia. This wildlife was generally sold through local middlemen in the countries of origin to brokers and dealers who would then resell to importers to smuggle into the United States, Europe, and Japan. The markups involved in the trade were astronomical, and as a result importers could afford to take chances, and could easily overcome the deaths of large percentages of their shipments. In some cases, especially those involving birds from Mexico, the importers would cram the birds into small containers, suitcases, automobile trunks, and even under the hoods of vehicles. Birds were drugged or given alcoholic beverages to keep them quiet, and these drugs, along with the lack of available oxygen and the presence of exotic diseases, could result in the deaths of more than 75 percent of the shipment, but still result in a profit for the traffickers.

As tragic as the inhumane treatment accorded the birds and other wildlife by the smugglers, was their total disregard for the fact that they were destroying not only individual creatures, but also complete species. The smuggler was not only breaking the law, but was also bringing many species closer to extinction.

In addition to the smuggling problem we were confronted with the fact that many of the birds were diseased and could, and did, infect domestic poultry and other fowl, resulting in large numbers of poultry having to be destroyed.

Senator CHAFEE. We are familiar with that. Was it you that testified 2 years ago from Customs? That is the background, let's get to what we are doing about it.

Mr. LOGAN. The scope of U.S. Customs' activities in the late 1970's can be demonstrated by the fact that a 6-month survey of investigative cases from October 1, 1979, to March 31, 1980, revealed that we were involved in over 175 investigations, and that during the 6-month period, Customs cases had resulted in over 51 significant seizures and 45 convictions for violations of the wildlife laws.

Although the scope of our efforts has been reduced in the past 3 years as a result of our necessary involvement in other programs of national importance, we are aware that the problem of smuggling of wildlife still exists, and we continue to pursue Lacey Act investigations wherever we find violations.

Senator CHAFEE. Your energies are being consumed to a considerable degree in drug efforts?

Mr. LOGAN. In drug efforts, in critical technology being exported and in commercial fraud efforts.

Senator CHAFEE. I understand that but go ahead.

Mr. LOGAN. Basically what I was going to explain, budgetary constraints, more successful enforcement of laws by our foreign counterparts, and increased involvement in such programs as narcotics interdiction, Operation Exodus, financial investigations primarily directed against the laundering of illicitly obtained funds by criminal organizations, and our commercial fraud programs intended to protect our revenues and enforce our import laws, have undoubtedly had a modifying effect on the amount of resources which we have been able to dedicate to enforcement of the wildlife laws.

For example, during fiscal years 1983 and 1984 to date, in San Diego, CA, alone we have conducted eight important cases involving the smuggling of psittacine birds from Mexico. These cases have so far resulted in the recovery of approximately 600 birds and the conviction of 13 defendants. Of particular interest is one case in which evidence has been obtained linking the smuggling venture to an organized crime operation in Arizona, with the proceeds of the parrot smuggling being used for drug purchases. Documentation recovered indicates that approximately 1,200 birds have been illegally imported and shipped to consignees throughout the United States.

Senator CHAFEE. These consignees must be pet shops, the pet trade?

Mr. LOGAN. Primarily the consignees in this particular investigation were not pet shops, they were individuals.

Senator CHAFEE. You mean individuals who were just going to keep them.

Mr. LOGAN. Yes, sir. In that particular investigation the actual consignees were not considered to be commercial in nature.

Senator CHAFEE. Proceed.

Mr. LOGAN. One fact which gives me pleasure is that in contrast to the actions of the U.S. Government prior to 1980, when seized fowl were usually summarily destroyed, we now dispose of our seizures according to the terms of the current memorandum of understanding between the Departments of the Interior, Agriculture, Justice, and the Treasury. As a result, seized birds are now turned over to the Department of Agriculture for quarantine purposes. After the case is adjudicated, and the birds are determined to be healthy, they are sold at auction. Thus we ensure the survival of the birds, increase the pleasure of the American people who can view or own the birds, and recoup some of the Government's costs incurred in investigating and prosecuting these cases.

Mr. Chairman, again I thank you for the privilege of appearing before you today. If you have any questions, I would be pleased to answer them.

Senator CHAFEE. How enthusiastic is the Department of Agriculture when being provided these birds to look after?

Mr. LOGAN. I consider them enthusiastic. Most of our efforts are confined to the Mexican border, Miami, and New York. In those particular locations the relation seems to be good and we have not had any problems that I am aware of.

Senator CHAFEE. How many Customs' agents are there?

Mr. LOGAN. Approximately 1,100.

Senator CHAFEE. To handle all these challenges you were talking about?

Mr. LOGAN. Yes.

Senator CHAFEE. Some are devoted solely to the wildlife trade?

Mr. LOGAN. At ports like San Diego we do have individual agents that are devoted primarily to that particular violation. However we do not have agents dedicated solely to wildlife investigations.

Senator CHAFEE. New York?

Mr. LOGAN. No, sir.

Senator CHAFEE. Philadelphia?

Mr. LOGAN. Not Philadelphia.

Senator CHAFEE. Do they get any special training?

Mr. LOGAN. The training would be basic. The training would be considered on the job.

Senator CHAFEE. As far as wildlife goes?

Mr. LOGAN. As far as wildlife goes.

Senator CHAFEE. Do you have any suggestions for this committee?

Mr. LOGAN. I have no recommendations. I frankly agree with Justice, and I think that the laws have been enforced well. I don't think we have had sufficient expertise in some areas but I have no recommendations concerning the law itself. I believe it is adequate.

Senator CHAFEE. How have you found your working relationships with the other agencies, such as the Fish and Wildlife and Justice?

Mr. LOGAN. Fish and Wildlife extremely well. Justice again, along with our other priorities, it is more than adequate. I would say with both agencies it is a good relationship and good support.

Senator CHAFEE. Are you looking forward to this computer system that Justice was talking about?

Mr. LOGAN. Yes, sir; we are. I think that is something several agencies have looked forward to for quite some time.

Senator CHAFEE. All right, we will be submitting questions to you. Thank you very much.

Our next witness is Mr. Train, president of the World Wildlife Fund-U.S.

STATEMENT OF RUSSELL E. TRAIN, PRESIDENT, WORLD WILDLIFE FUND-U.S.

Mr. TRAIN. Mr. Chairman, it is a pleasure to appear before you today to testify on Federal enforcement of the amended Lacey Act and its role in controlling illegal wildlife trade in the United States.

Let me add, Mr. Chairman, I congratulate you for calling this hearing and in particular for your continuing leadership on this very complex issue.

The Lacey Act provides a much-needed legal weapon in the fight against illegal wildlife trade. By prohibiting importation of wildlife taken or exported in violation of another country's laws, the Lacey Act enables the United States to support other nations' efforts to conserve their wildlife resources. If we in developed countries do not support conservation efforts in developing countries where most of the world's wildlife is found, the prospects for survival of many species are dim at best. The Lacey Act, in conjunction with the Endangered Species Act and the Convention on International Trade in Endangered Species, known as CITES, provide the United States with one of the most forceful sets of wildlife conservation laws in the world.

In 1981, Congress put enforcement teeth into this original piece of Federal wildlife legislation. We at the World Wildlife Fund were encouraged by the thoughtful changes enacted by Congress, largely at the urging of this subcommittee. We expected that the increased criminal and civil penalties, the elimination of an exceptionally onerous burden of proof requirement, and the prospect of strict liability forfeiture of illegal traded wildlife would dramatically reduce

the black market for exotic species such as caiman crocodiles from Brazil or Indonesian palm cookatoos.

We were pleased with the subcommittee's decision last fall to review implementation of the Lacey Act amendments. In preparation for the hearings, originally scheduled for last November, the World Wildlife Fund trade monitoring program called TRAFFIC undertook a major review of Federal implementation of the act. The results were discouraging; although Federal agencies were pursuing domestic violations under the Lacey Act, progress toward control of illegal international trade seemed at a standstill.

I might interject, to characterize generally, the implementation and enforcement of the Lacey Act insofar as international trade is concerned, I think the record to date has been pretty abysmal. When the hearings were postponed, we sent the results of our study to the subcommittee, to Secretary of the Interior Clark, and to Assistant Attorney General Habicht, and voiced our strong concern that international illegal wildlife trade was not receiving the regulatory or enforcement attention it clearly merited.

In brief, TRAFFIC found that international illegal trade in live animals, ivory, and objects such as shoes and handbags approaches $500 million annually, with the United States alone, according to Federal estimates, receiving more than 100 million dollars' worth of illegal skins, live birds, animals, and plants every year. As noted in a recent Time magazine article on illegal wildlife trade, much of the traffic involves fraudulent documentation. For example, from 1980 to 1982, Bolivia exported more than 1,000 native hyacinth macaws, an exotic parrot whose numbers are declining in the wild. Yet ornithologists report that the total Bolivian population of hyacinth macaws probably numbers only 500, or 500 less than the total leaving the country. Wildlife dealers in the region freely admit that they collected these birds in Brazil, where they are legally protected, and then obtained Bolivian import permits.

This wildlife laundering is big business, no different from laundering arms or currency. Like other covert activities, it often involves coordinating sophisticated criminal activity across several borders. If the whole story ever unfolds, the conclusion is apt to be shocking. Evidence has come to light recently that exotic wildlife smuggling goes hand in hand with drug smuggling. European officials are currently investigating reports that a cargo of 80 parrots shipped from Bolivia to The Netherlands included more than a dozen dead birds stuffed with cocaine.

The wildlife trade thus presents an international problem that is deadly serious and tremendously complex. The United States, which a decade ago was a moving force in negotiating and implementing the CITES convention, must take the lead today to control the widespread illegalities in the international market. As the world's largest importer of other countries' wildlife, we contribute to the economic incentive to poach, smuggle, launder, and destroy wild populations. It is our responsibility to control our imports and thereby help producing countries control their wildlife exports.

Senator CHAFEE. What other countries, Mr. Train, other than the United States, act as an economic force in encouraging this activity?

Mr. TRAIN. I think Japan, Mr. Chairman, probably the second most important factor. Western Europe generally with West Germany, I believe, would be the other most important factor. But Western Europe quite generally not just West Germany.

Senator CHAFEE. Who is doing a particularly good job in controlling the imports? How about Great Britain, for example? Anybody we can point to that is doing a superior job?

Mr. TRAIN. I think I will ask Ms. Fuller to answer that question.

Ms. FULLER. I think that Great Britain does have a fairly effective system. They, as I understand it, inspect shipments—a higher percentage of shipments—and attempt to keep endangered products out of the country. That is not to say it is perfect there either but they do make a serious effort.

Senator CHAFEE. Thank you. Why don't you proceed.

Mr. TRAIN. Many countries want this help. Brazil, for example, sees the Lacy Act as a vital means of controlling illegal trade from its territory. I have attached to this testimony a letter from Mr. Renato Petry Leal, Director of National Parks and head of Brazil's CITES Management Authority, expressing his support for stricter enforcement of the Lacey Act and citing the favorable example this law sets for other countries.

If I could, sir, ask that letter be made part of the record.

Senator CHAFEE. It will be.

[The letter referred to follows:]

DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS NO. 111908
LM/WD
Portuguese

R 2719582 JAN 84
FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 2676

UNCLAS SECTION 01 of 02 BRASILIA 00879

SUBJECT: WILDLIFE: REQUEST FOR IBDF/DN TO TESTIFY BEFORE SENATE COMMITTEE

REF: 83 STATE 309558
[First paragraph of cable is in English.]

Attachment to Official Letter No. 1411/83-DN

November 29, 1983

The Importance of the Lacey Act and Its Effectiveness in Preserving Brazilian Fauna

Brazil has what can be called a strict law for the protection of fauna, the first article of which states that wild animals are the property of the State and utilizing, pursuing, hunting or trapping them is prohibited. Exceptions to the first article, such as recreational hunting, scientific collections, and animals from registered breeders, are referred to throughout the law.

Although existing legislation is a genuine reflection of the opinions and desires of the majority of the Brazilian people, several problems exist with respect to its

implementation. Brazil's great size and its many miles of international borders make effective measures for the control of poaching and smuggling of live animals, parts, or derivatives thereof unfeasible. Such obstacles are compounded by the financial and structural problems intrinsic to all developing countries.

As a result of their concern about the pressure that leads to the gradually accelerating disappearance of wildlife, a birthright of future generations, 81 countries are today parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITIES), including Brazil and the United States. That convention, while it is designed to be comprehensive enough to cover the basic needs of each country, specifies that each party may adopt stricter measures for the preservation of wildlife in its territory. Several countries have adopted stricter domestic measures regarding the rational use of flora and fauna with a view to their preservation.

One such country was the United States of America, which made a timely decision to favor conservation on a worldwide scale as well direct cooperation with countries that wish to protect their wildlife.

Consequently, the amendments that have recently given the Lacey Act, a law which has been an example of international solidarity, a clearly humanistic and conservationist quality

were regarded very favorably and with great respect by the Brazilian people, by conservationists, and by all persons who directly or indirectly seek the rational utilization of fauna.

In fact, those of us who work directly with Brazilian wildlife know how much the responsibility entrusted to United States citizens has aided in the preservation of our natural heritage.

Of course, there are several other types of pressure but the United States attitude is encouraging and, in addition to providing effective cooperation, it serves as a model for other countries.

It is very difficult to control all ports of clandestine exit and it is difficult to control hunting and clandestine export from Brazil without documents or sometimes with blatantly forged documents. Control can, however, be made demonstrably more effective if those to whom the goods are shipped and the shippers themselves are also held liable and penalized for receiving or transporting dead specimens illegally, in the country of origin.

We have noted a reduction in illegal shipments of wild animals and parts thereof from Brazil directly to the United States. We have also seen a decrease in United States imports of animals indigenous to Brazil, i.e. those whose only natural habitat occurs in Brazil, even when re-export from another

country is involved. In the latter case we have been consulted to confirm the legal origin of the animals or products.

It is not necessary to dwell on further details to comprehend the benefits that the Lacey Act has produced for Brazilian fauna.

We see no need for additional legislation and believe that existing laws are quite effective.

We might, however, enhance the implementation of this law by instructing customs agents who work directly or indirectly with wildlife imports in pertinent Brazilian law and by augmenting, when necessary, the personnel working in that area.

We believe that such action would make cooperation more effective for our country.

[s]Renato Petry Leal
Director, Department of National Parks and Other Protected Areas of the Brazilian Institute of Forest Development (IBDF)

Mr. TRAIN. CITES by itself is an inadequate weapon to stem the flow of smuggled wildlife from producers, through one or more intermediaries, to consumers. Many importing countries routinely accept reexport permits issued by intermediary countries, even though a wildlife shipment may have left its country of origin illegally. The Lacey Act provides an essential backup to CITES. But effective implementation necessarily requires familiarity with foreign wildlife laws and the species protected within each country—a familiarity U.S. officials have, unfortunately, lacked.

I am convinced that most traders want to work within the law, but are at a serious disadvantage where information on foreign laws is not available. Importers face not only possible seizure and loss of investment in a shipment they assumed was legal, but also uneven enforcement at different ports of entry, a situation that favors those who gamble with the law.

Happily, I can report that World Wildlife Fund has just completed a full analysis of the wildlife laws of Latin America and a listing of the species protected by each country.

I will note, Mr. Chairman, that the individual responsible for that particular report is Kathryn Fuller who is with me. Worldlife Fund and the CITES Secretariat will publish this report next month. With the help of the Bonn Law Centre of the International Union for the Conservation of Nature and Natural Resources, we have begun a second volume on the laws of Africa, and will undertake analyses of the laws of Asia, Oceania, and the Caribbean later this year. This work has been funded in part by the U.S. Fish and Wildlife Service, the Department of Justice, the International Association of Fish and Wildlife Agencies and the Reptile Skin Industry Trade Association, and also, I should add, the World Wildlife Fund. We have had the official support of the CITES Secretariat and active assistance from Latin American governments and the U.S. State Department. It has been a truly international endeavor which should benefit governments and traders alike.

We have had a close association with the CITES Secretariat, the International Union Conservation of Nature and the various TRAFFIC offices around the world so that World Wildlife Fund has available to it an international network upon which it can draw for information.

Of course, preparation of these materials will not by itself cure the problem. I propose the following immediate steps in a campaign to eradicate illegal wildlife trade:

First, the Government should disseminate to all traders and trade associations information on foreign wildlife laws—starting with those of Latin America—along with lists of species protected within each country. The roster of dealers licensed biennially by the Fish and Wildlife Service to import wildlife provides a logical starting point.

Senator CHAFEE. Mr. Train, did you hear the testimony, I think it was Justice that said they were going to do that?

Mr. TRAIN. Yes, I did.

Senator CHAFEE. Have they been saying they were going to do that for some years?

Mr. TRAIN. I believe that this is reflecting—I think a new commitment on the part of the Department of Justice to implementing

the Lacey Act. This is not something that has been said for a long time. It is new and it is extremely much welcomed.

Senator CHAFEE. Now, the thing is to see if they do it.

Mr. TRAIN. Yes, sir, that is quite correct. On all these matters, I think those of us in the private sector will be watching performance very closely and will certainly hope that this committee will continue its oversight actively.

Senator CHAFEE. It will. We will continue our oversight and if it doesn't require a formal hearing, if you could let us know by mail if you think things are not happening that will be helpful.

Mr. TRAIN. Thank you, we will do that.

Second, the Government should put all traders on notice that it intends to enforce these foreign laws, by publication in the Federal Register of notices about foreign wildlife trade prohibitions, such as India's ban on exports of snake skins. It should embargo imports from any country that has banned wildlife exports, such as Brazil, unless the wildlife authority of that country gives prior notice that it intends to issue a special export permit. The Government should also embargo wildlife shipments of suspect origin and suspect documentation. For example, when trade statistics show that palm cockatoos are coming out of Singapore, and Singapore is known to be a wildlife laundering center without a wild cockatoo population, the Government should publish a notice prohibiting the entry of palm cockatoos purportedly originating from Singapore.

Senator CHAFEE. Mr. Train, are other nations in South America thinking of having a total ban of wildlife export, such as Brazil has?

Mr. TRAIN. I am not personally aware of that.

Ms. FULLER. The systems are variable. Some countries have systems which don't regulate trade any further than CITES. Bolivia recently instituted a 1-year ban on export of live wildlife, not including wildlife products, so that from country to country the rules are different.

Senator CHAFEE. I suppose it represents a source of hard currency for them?

Ms. FULLER. Absolutely. And we certainly are not opposed to trade. It is a source of revenue for many countries. We want to ensure that the trade that occurs is legal and carefully monitored.

Senator CHAFEE. Thank you.

Mr. TRAIN. Third, the U.S. Customs Service should include wildlife imports among its priorities and should issue directives to the ports about wildlife trade restrictions. The Service should also encourage agents to investigate illegal shipments and should cooperate closely with the Departments of Justice and Interior. The Customs and Fish and Wildlife Services should revise and strengthen their cooperative agreement to facilitate the exchange of information on protected species and foreign laws.

Fourth, the Department of Justice should undertake responsibility for certifying foreign wildlife laws and incorporating relevant portions into the LEMIS computer used by Fish and Wildlife Service agents. The Department should also investigate and develop, in cooperation with the Fish and Wildlife Service, an explicit policy of rejecting illegal shipments of wildlife or wildlife products and requiring return of such shipments to their port of departure. Such a

policy would discourage illegal imports and would alleviate the burden of caring for seized shipments of live animals. Obviously, this must be a carefully crafted policy, because in some instances it may not be desirable to return the wildlife to an uncertain future. In addition, the Department should reinstitute its Wildlife Newsletter, which in previous years served as a valuable source of information to agents, prosecutors, and the public about wildlife law enforcement cases and issues.

Fifth, the U.S. State Department should continue to provide assistance in obtaining formal verification of foreign law provisions for use in enforcement proceedings. The Department should also develop standard procedures for embassies to follow when foreign law proof is needed, and should work toward obtaining full cooperation in wildlife trade cases from foreign embassies.

I think this is another area where we can expect to see significant improvement in the whole process. At the present time or at least until recently, the typical situation involved enormous delays of a year or so in trying to get certification from the country of origin of what its law is in a particular case. Obviously, this is impractical in terms of enforcement. Most live imports would be long dead before the answer came back but hopefully this whole process in discussions with the State Department is going to be expedited.

Sixth, Latin American countries that have laws protecting native wildlife species should be encouraged to include them on appendix III of CITES, when they are not already included on appendixes I or II of the treaty. This step would simplify enforcement by consumer countries, which would focus on whether a valid CITES export permit accompanied a shipment, rather than a possible violation of foreign law.

Seventh, the Congress should appropriate additional funds to the U.S. Fish and Wildlife Service for the express purpose of enforcing CITES and the Lacey Act. I am happy to hear that the House Appropriations Subcommittee on Interior has recommended an additional $1.4 million to hire 20 new agents for international law enforcement and I sincerely hope that the Senate will support this initiative. To ensure that these agents are not diverted from the priority task for which they are hired, they should be responsible directly to the law enforcement division in Washington, rather than to the Service's regional directors.

Eighth, the Fish and Wildlife Service should develop a capability in forensic science, an area it has sorely neglected. As wildlife smugglers become increasingly sophisticated, the Service must be able to identify the parts and products of protected species. It must be willing to put more funds into forensic research and to establish a laboratory for this purpose.

I note that on June 18 the Service published proposed rules that would increase the biennial license fee for major wildlife traders from $50 to $250 and would establish a $25 inspection fee for each commercial shipment. The fees would go into a special account drawn upon for enforcement purposes. We strongly support these proposed rules, but want assurance that the money in this special fund is used to regulate and control international wildlife trade and is not diverted to domestic purposes. A significant portion of this fund should be used for forensic research.

Finally, we applaud the recent passage of an amendment to the Lacey and Endangered Species Acts that allows creation of a special revolving fund to cover costs of caring for seized live and wildlife.

The implementation of all these steps requires the cooperation of Government agencies, conservationists, and traders. With this in mind, World Wildlife Fund officially launched a wildlife trade campaign on May 22, with assistance from His Royal Highness the Prince Philip, Duke of Edinburgh; World Wildlife Fund's international president, Senator Chafee; Under Secretary of Interior Ann McLaughlin; Assistant Attorney General Henry Habicht; fashion designer Ralph Lauren; and representatives of major associations that import wildlife. We have been pleased and encouraged by the whole-hearted support that the Government agencies have given to this effort. On the basis of discussions we have had with each of them, I hope to see adoption of many of the measures I have described within the next few months.

Self-policing within industry must go hand in hand with government regulation and enforcement. Importers have a strong interest in controlling illegal trade. Poachers hurt legitimate businesses by depleting wild populations and tarnishing an industry's image. We have received encouraging statements of cooperation from importers and manufacturers, particularly from the reptile skin industry, the American Association of Zoological Parks and Aquariums, and the Fur Conservation Institute of America. We hope that each wildlife importing association will adopt strong trade guidelines and will disseminate information about wildlife trade prohibitions to its membership. World Wildlife Fund looks forward to collaborating in those efforts.

Public education is the remaining component of the campaign. We plan to help educate the wildlife product consumer, the person who might buy snakeskin shoes or a crocodile handbag, to recognize illegal products in the marketplace. To do this, we will develop consumer brochures for distribution through travel agencies and retail outlets and will set up educational displays in airports throughout the country. We look forward to working closely with the Department of the Interior and with industry on the educational aspects of our campaign.

World Wildlife Fund and our colleagues in the wildlife trade campaign are deeply concerned about the extent of illegal trade and the threat it poses to rare animal and plant populations. Mr. Chairman, I commend you and the members of the subcommittee for your leadership in developing sound wildlife trade legislation. We encourage you to continue to play a lead role as new trade regulations and Federal enforcement measures go forward.

As you can tell from the testimony presented today and over the past several years, the international wildlife trade industry does not lend itself easily to regulation or outside enforcement. It presents complex problems not only at the ports where products must first be identified, but also here in Washington where foreign wildlife laws must be collated and verified to support enforcement action. As is typical in the early stages of industry regulation, communication systems and regulatory measures need refinement. We can only address these problems through broad cooperation and the

systematic exchange of trade information. I am optimistic that our combined efforts to improve Lacey Act administration and enforcement and to educate importers and the general public about the problems of illegal trade can produce a dramatic and rapid decline in the illegal trade.

I would simply add at the end, Mr. Chairman, that while I injected toward the beginning of my statement the description of Federal Government implementation and enforcement of the international aspect of the Lacey Act as abysmal in the past, I am really hopeful that we are seeing a major change in this regard. Time will obviously tell. I would imagine it will be some months before the picture really emerges clearly.

I have had the opportunity to discuss this problem with the Secretary of the Interior, Judge Clark; with the Attorney General, Mr. Smith, personally; as well as with high officials in the Treasury Department and the Commissioner of Customs and my staff has been in touch with members of the State Department. And I think that all the indications are that there is honestly a new commitment to making this act work and on the part of the Federal Government to living up to its responsibilities so that I am guardedly hopeful but again encourage the committee to keep a close eye on the whole process as well.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Mr. Train. I must say, you did end up on a more optimistic note than you started. I am glad that you think there is some grounds for confidence in the future.

What particularly makes you think so? I know you compiled information that you sent along to Judge Clark and the Justice Department. Did you ever hear anything back?

Mr. TRAIN. Yes, we had a response back from Interior in particular. I would describe it as a defensive sort of response as of that time.

We have had since then a number of conversations with Interior and while I think that the report which was cited in the response to me, and I will be happy to make that available for the record, if you wish, refer primarily to enforcement—the enforcement record as it applied to domestic violations of the Lacey Act is quantitatively not an unimpressive record but our own analysis indicated that the record insofar as imports were concerned was really a different story and not a good picture at all.

Senator CHAFEE. But you think it is going to be better.

Mr. TRAIN. I honestly do. I can't prove that but I think there is very definitely a new commitment at the top of these agencies. I think that the kind of publicity that those of us on the outside have helped generate about the whole issue, that Congress has helped generate has certainly helped. This is not an issue now that is easy to simply turn one's back to or cover up.

Senator CHAFEE. I think your eight points are very good. We will continue to follow this as I am confident you will, too, and stay in touch with you. Some of these were covered in testimony.

You put stress on user fees being solely used for regulating and controlling international trade while none of it being used for domestic purposes. I am not sure they will be willing to segregate it,

nonetheless, we will pass that on to them. Thank you for all you have done, Mr. Train.

Let me ask you about one of your last comments when you were getting fairly optimistic. I am always glad to hear optimism.

We have had encouraging statements and cooperation from importers and manufacturers of the reptile skin industry. Is that for what they are going to do or that they are doing something now?

Mr. TRAIN. I think this is particularly in connection with their interest and support of our efforts to compile accurate statements of wildlife law in the various producing countries. This is where we have been having most of our conversations with trade associations and have found a very responsive reaction to that effort.

Senator CHAFEE. I think it is true that one who wants to obey the law sometimes finds it a little difficult if you don't know where a skin comes from, indeed, you said you don't even know exactly what kind of a skin it is sometimes.

You have no further specific suggestions for this committee other than those contained in your testimony?

Mr. TRAIN. That is correct, sir. We certainly will keep in touch with the committee.

Senator CHAFEE. We look forward to that. Thank you very much.

The next panel will be Mr. Marshall Meyers from the Pet Industry, Dr. Wagner, Dr. Bruning, Mr. Eno, and Ms. Stevens.

STATEMENT OF MARSHALL MEYERS, COUNSEL, PET INDUSTRY JOINT ADVISORY COUNCIL

Senator CHAFEE. Mr. Meyers, you are first.

Mr. MEYERS. Thank you very much, Mr. Chairman. My name is Marshall Meyers and I am appearing today as counsel to the Pet Industry Joint Advisory Council. I have submitted written testimony and I would like to summarize briefly.

We believe that the 1981 amendments, especially with the stringent forfeiture provisions, coupled with increased civil penalties, have proven to be deterrents, maybe not as great a deterrent as we would like but it has helped. At your urging the 1981 amendments have been well publicized, by conservation organizations, by Mr. Wagner representing the zoological community, and by ourselves. But still we need a lot more communication.

The psittacine issue referred to by the Departments of Interior and Justice, by Customs, and Mr. Train is a very serious issue that affects all of us, including the pet industry. The Texas-California border is a real problem. I will be leaving here in a few minutes to catch a plane to meet with representatives of the poultry industry and representatives of 40-plus State departments of agriculture to try to develop a uniform recordkeeping and identification mechanism—leg banding system—for the commonly smuggled birds. Without traceability, it is virtually impossible for Interior, Justice, or Customs to effectively enforce many of the wildlife laws.

I also will meet with a pet shop owner who is frustrated over the past 2 years because he has been offered smuggled birds on numerous occasions. He contacted Interior, and Customs; he taped approximately 10 telephone conversations during which the smuggler told how he used his mobile home, explained the process; he kept

pressing the Department and said, "I will go out there. You may wire my body. I will make a purchase for you." They came back said it is low priority and they do not have the money.

Senator CHAFEE. That is very discouraging. I don't blame your man for being upset. We will ask Justice about that.

Mr. MEYERS. I also recognize their constraints and their problems, but the industry is willing to try to assist in this area because it is an extremely serious problem, not only from a public health standpoint because of Newcastle's disease, but also from the protection of wildlife, especially in Central and South America.

Effective law enforcement should not be evaluated by tally sheets showing statistics on seizures, forfeitures, and criminal prosecutions. We should also examine the nonprosecutorial role that the department has in inspecting shipments, inspecting documents, and disseminating information. I have listed at pages 2 and 3 eight points which we feel are hindering the program. At the top of the list is inadequate personnel and funding, and lack of uniformity in administration of the wildlife laws. Most importantly, item 3, lack of central control over field activities by the Law Enforcement Division in Washington. We also feel there is a misplaced emphasis concentrating on technical rather than meaningful violations. Additionally, an antitrade attitude, a failure to implement the bonding procedures already provided for in the Federal regulations, a failure of the Department to provide public notice of changes in enforcement policy, and, in some instances, a rigid attitude toward maximizing penalties rather than exercising discretion in compromising penalties and attempting to secure future compliance detract from the program's effectiveness.

Senator CHAFEE. I don't understand point five.

Mr. MEYERS. On a number of occasions when we have been trying to deal with the ports, the solicitors' office as well as with the Department of Justice, we have been told that people shouldn't be allowed to deal in wildlife, that the wildlife trade makes too much money, that we shouldn't be allowed to make a profit in wildlife, that the trade will be eliminated and that anybody involved in the wildlife trade is a crook. That attitude has improved in the last couple of years but as recently as a few months ago that was attitude was replaced by Interior's Solicitor's Office. We believe that attitude can be improved through better communications. We have included a proposal for public workshops/roundtable discussions whereby the trade, conservationists, and the Government working closer together can eliminate some of the hostile attitude. The antagonism and ill will which permeates the effectiveness of the Government's dealing with industry can be alleviated.

I have included examples of specific cases to highlight some of the points. As to funding and manpower, we have a serious situation which will occur in the next few days because the Department does not have adequate manpower at Atlanta International Airport. Due to severe manpower shortages, Atlanta remains a nondesignated port for importing/exporting wildlife. Rather than truck two gazelles—endangered species—from Savannah to Atlanta—a 3- to 4-hour surface move—the gazelles will have to be trucked to Miami—10 to 12 hours—instead of allowing the gazelles to enter

international air transportation at Atlanta. At Atlanta, there are only have 2 agents responsible for supervising 34 agents and 5 inspectors in 10 States, Puerto Rico, and the Virgin Islands. Funding goes to the heart of the effectiveness program.

I would like to remark on the comments made by Mr. Train. Our organization has attempted to work with the World Wildlife Fund and approximately a year ago it broke down I believe from a misunderstanding on the trade's standpoint. I am very heartened by his statement today and I believe through greater cooperation with organizations such as World Wildlife Fund and by using CITES as a mechanism to encourage foreign governments to exercise control over and discipline exports which are violating their local laws, we can achieve many of the goals discussed here today.

In my prepared statement, I have made some recommendations.

One, the Department has published an import/export manual which contains valuable information. That manual should be readily available for public inspection at each port. I think it could help many people in trade better understand the role of the Department, the rules and procedures and hopefully will alleviate some confrontation.

Two, it would be most useful to publish in the Federal Register notices and changes in policies, notices on foreign laws, and other pertinent information affecting trade. We advocated this procedure to the Department in August of last year. It fell on deaf ears. I noticed in their written statements today that due to communications Interior has had with the World Wildlife Fund, and I hope with us, they now intend to do that.

Ferreting out foreign laws is very difficult. At your urging several years ago you put us on the spot and the pet industry, and the Fish and Wildlife Service jointly funded a project with the Association of Systematic Collections to publish a combined list of federally protected wildlife. A second volume explaining the Federal wildlife laws is at the printer. The third volume, a compilation and interpretation of the wildlife laws of 50 States is in final editing by our law firm. It has proven to be a massive task collecting, let alone analyzing those laws. At foreign level it is a far greater task. I believe the trade, the World Wildlife Fund, and the Departments of Justice, Customs, and Interior working together, could collect the information that could be disseminated in the Federal Register to place the public on notice.

Third, implementing the existing bond procedures is essential. A lot of time is expended in seizures involving minor problems—technical violations. I was involved in one just a few weeks ago. There was a threatened seizure because a foreign government had misspelled a scientific name by using a "u" instead of "o." We wanted to post a bond. It took 4 hours of negotiations, retaining attorneys, telephone calls to Miami, Atlanta, and Washington and the shipment was finally released. A simple bond could have been posted, the animals removed from the airport, and we could have resolved the matter in a more humane fashion.

Four, that brings me to point four—centralized control. On too many occasions when we receive information from the Law Enforcement Division in Washington we are told by the field, "We don't care what Law Enforcement said in Washington." Mr.

Bavin's office does not have line control over the field; it is this decentralization which has caused numerous problems.

Five, the seizure/forfeiture procedures are effective but I still believe the Department should publish some guidelines as urged by the Congress in the House and Senate reports so the Department can mitigate or remit forfeitures under those circumstances when it is obviously a minor technical problem and that the importer was not at fault. Those guidelines, to the best of my knowledge, have not been forthcoming.

Six, public workshops/roundtable discussions. Several years ago the Department held well-attended workshops in three ports. This program should be reinstituted on a periodic basis. It would also prove beneficial if the Department held roundtable discussions with interested parties at each port to discuss port practices and try to resolve issues locally. Customs periodically meets to discuss port practices with importers and they help set up procedures—the dialogue helps reduce many problems.

Seven, we cannot urge the Congress enough to assist the Department through increased manpower and funding to carry out enforcement programs and disseminate information.

Mr. Chairman, I believe that all of us can work together to improve the system with which we have many encounters at the local level involving what we consider minor technical problems which detract from the more serious issues. Thank you.

Senator CHAFEE. Thank you, Mr. Meyers. I remember when you came here several years ago I did ask you to work with Justice and see if you couldn't straighten out these conflicts that seem to be existing. I think your points are well taken.

All through this runs the problem customs has drug enforcement is demanding so much of their time, and it is hard to fault them for that, which is their No. 1 national priority, therefore something like wildlife, importation of illegal or endangered species takes a lower priority. However, I hope we can get some attention from them, plus the cooperation with Fish and Wildlife and the Justice Department.

I think your point is a valid one, that it isn't some tally sheet of traffic issue.

Now, Mr. Meyers, if you have to leave, you can go ahead. We thank you for your testimony.

Mr. Wagner.

STATEMENT OF ROBERT O. WAGNER, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

Mr. WAGNER. Mr. Chairman, I am executive director of the American Association of Zoological Parks and Aquariums. I wish to thank you for this opportunity to address your subcommittee on implementation of the Lacey Act. The AAZPA is the largest professional zoological park and aquarium organization in the world. AAZPA represents virtually every professionally operated zoological park, aquarium, wildlife park and oceanarium on the North American Continent, and the vast majority of the professional staff members employed therein.

Dr. Bruning, the legislation committee chairman of AAZPA and the curator of Ornithology at the New York Zoological Park, and I will divide our areas of emphasis. I will address the role zoos play in the seizure of wildlife and some of the past problems encountered by our members because of their cooperation. Dr. Bruning will address some of the inconsistencies we see in the present enforcement of the Lacey Act.

AAZPA and its member institutions have cooperated with the Departments of Interior, Agriculture, Treasury, and Justice over the years by holding seized wildlife. Once wildlife is seized by the Government, the local zoos are normally called upon to help. If the wildlife is birds or hoofed animals, the seizure is not made until the wildlife is released from the required Federal quarantine. In some cases, zoos are called upon to assist immediately upon seizure of wildlife. The assistance of zoos is required because the Government has no adequate holding facilities nor the expertise necessary to maintain exotic wildlife.

In the past when zoos held wildlife, there was no formal agreement entered into between the Government and the zoos to guarantee that the zoos would be reimbursed for the costs they incurred on behalf of the Government. The terms of payment and the conditions attached to the holding of the wildlife were very uncertain. Moreover, payment by the Government was always delayed.

I will briefly cite three cases involving the San Diego, Brookfield, and Los Angeles Zoos which illustrate many of these problems. On March 23, 1979, the San Diego Zoo was asked to hold 183 birds representing some 23 species. After holding the birds until April 11, 1980, the birds were picked up and taken to an auction where they were sold to the highest bidder, without regard to the bidder's qualifications or a determination of the adequacy of holding facilities. The San Diego Zoo was also required to bid on and pay immediately for all birds that they desired to obtain. This occurred even after the zoo had signed an agreement with the Government which stated that the zoo could retain those birds they desired for their own collection. It was over 2 months before the San Diego Zoo was reimbursed for its expenses incurred in holding the birds for some 14 months.

The Los Angeles Zoo was asked to hold over 500 parrots seized by the U.S. Government. After months of holding the birds, many of which died from a highly infectious disease, the birds were returned to the importer. The Los Angeles Zoo lost several of its own birds due to the introduced disease and was initially refused payment for care of the seized birds, because many of them had died. Eventually, the zoo received some payment for its efforts; but this, in no way, compensated for the loss of their birds or began to cover the veterinary and maintenance costs involved.

Senator CHAFEE. Where is Brookfield?

Mr. WAGNER. Brookfield is in Chicago.

In 1982, the Brookfield Zoo was asked to hold a large shipment of birds. An agreement was reached on compensation for care before the zoo accepted the birds. The Government then proceeded with plans to auction the birds to anyone who might want to purchase them, including the individuals who had illegally imported the birds. The threat of lawsuits prevented the public auction. Because

of the time required for all the legal action to occur, however, many of the birds died before permission was granted to allow distribution to suitable facilities where they could have all been housed to avoid stress and rapid spread of various avian diseases.

As a result of the tremendous financial loss and near total frustration by several AAZPA member institutions and the continued concern with the welfare of seized wildlife, AAZPA began working with the Fish and Wildlife Service in 1979 on the problem of the disposition of seized wildlife. Finally, in 1982, a memo of understanding on the disposition of seized wildlife was signed by the Departments of Agriculture, Justice, Interior, and Treasury. This MOU addressed the seizure, forfeiture, and disposal of illegally imported live wildlife, the handling costs and the distribution of proceeds from their sale.

The specific purposes of the MOU are: One, coordination of the individual efforts at enforcing statutory responsibilities for importation of birds and other wildlife; two, establishment of procedures for seizing, quarantining, and disposing of illegally imported birds and other wildlife through forefiture and public sale; and three determination of the distribution of costs and proceeds collected with such activity.

Senator CHAFEE. Mr. Wagner, you then go on to talk about the memorandum of understanding. How is it working?

Mr. WAGNER. At this juncture we are very pleased with recent occurrences. We had a meeting with officials in the Fish and Wildlife Service Law Enforcement and determined we were much more closer in signing the memorandum of understanding than we had previously thought. The progress has been made in terms of the Government accepting responsibility to pay the cost incurred by the institutions from the day of seizure if indeed the Government wins or loses its case.

One of the original concerns was that the zoos would be asked to hold the birds on speculation of the Government winning its case. If indeed the Government abandoned or lost its case, the zoos would have no opportunity to recover any of their costs.

One of the most important points, Mr. Chairman, that I want to make to the Department of the Interior and to you and your committee is the fact that space is a critical issue in zoological parks and aquariums and even once we sign the memorandum of understanding our member institutions will not have all that much space available for holding seized birds and it might be that the Department is going to have to soon consider an alternative and that might be the construction of some facilities that they will own and operate.

Senator CHAFEE. I think that would be a disaster.

Mr. WAGNER. It potentially will be but the zoological institutions involved would not be able to hold the numbers that might be anticipated by the members of the subcommittee or perhaps members of the Department and space is very critical.

Senator CHAFEE. We recognize space is a critical issue and I know that any time you suddenly have 800 cockatoos thrust on you it presents problems. I recognize that and your statement here, I can sympathize with you that you are not anxiously awaiting Fish and Wildlife to seize an illegal shipment so you can have it.

Mr. WAGNER. That is absolutely correct.

Senator CHAFEE. I know there are horror stories and you can name many more. The Government isn't going to build separate facilities and if they did it would be a boondoggle and we all know that. Where would we build them? It seems to me we have to work out a system where you get paid whether the Government wins or loses its case. You can't have contingent liabilities.

What specifically do you want us to do?

Mr. WAGNER. I think, Mr. Chairman, that the board of directors of our association will indeed authorize the signing of the memorandum of understanding and the formal agreement between the AAZPA and the Fish and Wildlife Service at our next meeting in Miami in September. In the meantime, the AAZPA members are cooperating with the Fish and Wildlife Service. It has already been addressed in some of the other testimony you heard this morning dealing with the black palm cockatoos. Zoological institutions want to assist in stopping the illegal trafficking in wildlife and want to do all we can to assist the Department and the subcommittee put an end to such trade.

Senator CHAFEE. It seems to me that the Government is under a lot of redtape. They owe San Diego Zoo a lot of money, San Diego wanted some of the birds but they couldn't take the birds, they had to bid for them and pay cash for them.

Mr. WAGNER. It was actually worse than that.

Senator CHAFEE. Don't give me any worse than that. They are a double loser.

Mr. WAGNER. That is correct.

Senator CHAFEE. Are these things being straightened out in this memorandum of understanding?

Mr. WAGNER. Yes, sir, per the meeting that we had 2 weeks ago Friday it occurs to those of us involved that we are ready to sign off with the Fish and Wildlife Service in the memorandum. I am hopeful that this can occur.

Senator CHAFEE. If it doesn't work out let us know.

Mr. WAGNER. Yes.

Senator CHAFEE. You said you only waited 2 months for payment from the Government, I thought that was a miracle.

Mr. WAGNER. It was over 2 months before we were reimbursed but San Diego had to pay the day they picked up the birds. The Government owed $57,000 but San Diego had to pay $18,000 for the birds they wanted and then the Government waited 2 months to pay them back their $18,000 plus the remaining balance.

Senator CHAFEE. That is salt in the wound.

Dr. Bruning.

STATEMENT OF DONALD BRUNING, CURATOR OF ORNITHOLOGY, NEW YORK ZOOLOGICAL PARK

Dr. BRUNING. Mr. Chairman, I am here testifying on behalf of both AAZPA and the New York Zoological Society. I am also secretary of the parrot specialist group of the International Council for Bird Preservation.

Senator CHAFEE. Are you the people that gave Atlanta such a bad mark?

Dr. BRUNING. We feel very strongly that the Lacey Act is not being as vigorously enforced as it could be and when it is enforced it is frequently done in an arbitrary manner. I thought I would give you some examples of specific things to illustrate this, starting with something we already heard a great deal about this morning already and that is palm cockatoos. I have listed actually five cases involving palm cockatoos that I am aware of over the last 8 years.

Senator CHAFEE. Let's not take all five cases on palm cockatoos, one or two will suffice. I am learning more about palm cockatoos than I ever knew I was going to know.

Dr. BRUNING. I will summarize. The first couple of palms were seized and were held by the New York Zoological Park and 14 months later were returned to the owner. The zoo received nothing in compensation. The next group were seized in 1979 and is still being held by the New York Zoological Society. The case has not been resolved.

Senator. CHAFEE Isn't this a repeat of what Mr. Wagner was into? Isn't this going to be straightened out by the memorandum of understanding?

Dr. BRUNING. Hopefully some of them will. In just a minute I will get to a couple of things that will go much beyond.

Senator CHAFEE. Why don't you touch on matters that Mr. Wagner didn't deal with.

Dr. BRUNING. Going on to the case of the 100 palm cockatoos seized in Miami, we helped the Department of Justice obtain the foreign laws from Indonesia, we are prepared to do that in the future and would like to help. It is of concern to us that the same importers import 27 birds earlier in 1983 and nothing has been done in regard to those particular birds. At the same time, another group of birds came into Los Angeles which were seized by the Government, and the Government is now proceeding to collect the money.

As you can see in these few cases with palm cockatoos the reaction of the Government for illegal importation is not consistent and it doesn't give the impression of very active enforcement. With some cases the importers getting the birds, others being seized, other nothing at all occurring. Of course, it was mentioned earlier that the Miami importer is currently attempting to import more palm cockatoos which points to the fact that what has occurred so far has not been a deterrent to this kind of activity.

Now moving on to another example. I think it was mentioned ealier that the Bolivian Government has recently moved to halt exportation of wildlife from Bolivia. The New York Zoological Society last month has provided a grant to the Bolivian Wildlife Society to help them release a number of seized birds and primates that were held by the Bolivian Government. It is unfortunate that at the same time there were shipments of birds that came to the United States that have been released out of U.S. quarantine even though the CITES Secretariat has advised that the documents under which they entered the U. S. were questionable—the Department of Interior chose not to seize those birds and they were released from quarantine.

Some of these birds are hyacinthine macaw which brings up another serious problem. The New York Zoological Park, myself in-

cluded, we cannot go out to purchase a Hyacinthine Macaw for exhibit at the Zoological Park because we know they were taken illegally in Brazil and imported in violation of the Lacey Act. Yet pet shops in New York and throughout the country sell these birds all the time. I have conferred with people in the Department of the Interior and I am told, yes, since we know it was illegal it would be a violation of the Lacey Act if we purchase them and yet they are sold in the pet shops. This is the kind of inconsistency that we feel is unfortunate.

New York Zoological Society in the past has conducted identification courses to help U.S. Fish and Wildlife agents and customs agents to identify parrots in particular but other birds also. We would like to do this in the future. We are willing to help so that their agents are more familiar with what the birds are and can identify them properly at the import point.

Senator CHAFEE. Is there any sort of advisory group that helps the Justice Department or Customs?

Dr. BRUNING. We regularly assist them whenever we are called upon to do that and we certainly are willing, ready, and able to help in many cases.

Senator CHAFEE. Who is them? Who in the Goverment gets in touch with you?

Dr. BRUNING. Usually the call will come from U.S. Customs, U.S. Fish and Wildlife, frequently from Justice or the Office of Law Enforcement here in Washington. It varies in each case. We are ready and willing to assist if we can.

Senator CHAFEE. I have an eerie feeling no one is in charge around here. Is that accurate?

Dr. BRUNING. It seems a serious problem that you never know who it is that is going to call or who is really in charge.

Senator CHAFEE. Who will make the decision?

Dr. BRUNING. Serious problems result when we try and deal with a local agent only to find out that it is being handled by the office in Washington then to be told by the office in Washington it is being handled by the regional director and it becomes confusing who we should see and how we could help.

Senator CHAFEE. Why don't you wind up your testimony?

Dr. BRUNING. I would like to thank you, Mr. Chairman, for the opportunity to testify. We feel that uniform enforcement is essential if we are to enforce our wildlife laws and discourage illegal activities. We feel that it is crucial that the United States take the lead role if we are to help other countries around the world. Right now I am not certain we are always setting a good example. Thank you for the opportunity to testify.

Senator CHAFEE. Mr. Eno.

STATEMENT OF AMOS ENO, DIRECTOR, WILDLIFE PROGRAMS, NATIONAL AUDUBON SOCIETY

Mr. ENO. I will submit my statement for the record and I have a few brief comments, particularly ones that focus on recommendations to the committee.

The Lacey Act Amendments of 1981 attempted to deal with the problem of unregulated trade among other things by strengthening

the criminal and civil forfeiture provisions of the act. Mr. Chairman, we urge you to focus your attention on three areas: First is the Law Enforcement Division of the Fish and Wildlife Service. Second, have the Service develop sufficient major high profile cases. Third, can the Service take additional steps to ease the industry compliance burden while still helping with law enforcement?

Senator CHAFEE. What burden?

Mr. ENO. Industry compliance burden.

With regard to the first area, today international trade poses, from an overall environmental perspective, the most important wildlife enforcement problems since it threatens the survival of so many species around the world.

Despite congressional concern about trade, the Service has traditionally slighted or ignored the international trade problems. As almost all the witnesses today emphasized, we need a balanced wildlife law enforcement program. At the moment, we are not getting one. We urge, as part of this oversight process, that you carefully review the components of the Fish and Wildlife Service law enforcement program, and we recommend that they devote 10 to 20 percent of its agent's, not inspectors; time to international trade cases.

The second area of concern we feel is the need to make major cases. Again, a number of witnesses have eluded to that today. The problem is that it is both time consuming and expensive to make major import criminal cases.

We have given you a list of criteria on which to gauge the Fish and Wildlife Service's program on law enforcement activity. As part of your oversight process, we urge you to explore whether the Service has specific enforcement programs to deal with major wildlife trade problems; does the Fish and Wildlife Service have a team working at the problem; is there adequate forensic capability in the law enforcement program?

Along with Mr. Train and other witnesses, we also urge you to look at the adequacy of the Service's funding and manpower.

It is still very difficult for an importer to find out what the law is in another country. There is still no adequate identification manuals or training sessions for inspectors in difficult identification problems for a species such as parrots and macaws.

We recommend for your committee to urge the Fish and Wildlife Service or the Justice Department to again publish a monthly wildlife bulletin either in the Federal Register or by subscription in which information which has been learned in recent cases can be listed.

In conclusion, we believe the Lacey Act is a workable statute, it should be vigorously applied. We request this committee to urge the Service to apply it in a balance fashion to devote sufficient resources and to publish a monthly wildlife trade bulletin.

Thank you.

Senator CHAFEE. Thank you, Mr. Eno.

Mrs. Stevens.

STATEMENT OF CHRISTINE STEVENS, SECRETARY, SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION, ACCOMPANIED BY GRETA NILSSON

Mrs. STEVENS. Thank you, Mr. Chairman. I have a few exhibits. Might I bring them up now?

Senator CHAFEE. Maybe if you can hold them up here at the end so we can see them.

Mrs. STEVENS. Here are posters that show monkeys dead on arrival at Kennedy Airport. This case was dealt with. However, it is very difficult to deal with these cases until the regulations on humane treatment regulations are promulgated by the Department. They have not been promulgated.

As you can see, that is a ghastly event. Carl Mainen, an excellent agent at Kennedy Airport, did manage to get the case prosecuted. However, it is very difficult to get them prosecuted without the proper regulations.

As you know, Treasury lost the authority to promulgate humane regulation because they did so little about it. Unfortunately, the same thing seems to have happened now that Interior has that authority.

So we urge you, Mr. Chairman, to ask to have those regulations promulgated just as soon as possible.

Now, I understand that they are being written, but they have not gotten to the Federal Register yet and even after they get there, it will be a slow process. So that is a very key part of the testimony that I want to present.

I won't read all of it because I know time is getting short. I would like, Mr. Chairman, to ask Greta Nilsson to join me. She is the author of both "The Endangered Species Handbook" and "The Bird Business". "The Bird Business" had a very important influence at the meeting of CITES that took place in India when countries voted to put all the psittacine birds in either appendix I or appendix II. That is a big step toward reducing the terrible problem that you heard about so much that you had to say, "don't tell me any more about it."

However, despite your wish not to know more, I would like to pass up to you, if I may, these documents from the U.S. Department of Agriculture which Greta Nilsson got under the Freedom of Information Act. I think it would be helpful. It is a listing of the huge number of birds that are found by USDA to be dead on arrival, just like these monkeys. In many cases, as you will see from some of those sheets, in the place where it wants to know what Fish and Wildlife Service did, USDA has written no show. In other words, nobody came from the Fish and Wildlife Service to see the birds dead on arrival. Had they been there they could very well in many cases have made a case on the humane requirements of the Lacey Act.

If you will look at the list, you will see how many there are. I think it is a total of 6,000. That is a separate sheet of paper which you may wish to ask Miss Nilsson about more thoroughly because she is the one that did the study.

First, it is extremely important that additional agents and additional funding be voted by the Congress this year. Actually, this is

rather a pitiful amount, just 20 additional agents, when you realize what an appalling job they have. I am one who will in many cases stick up for the Department. I think they have done a lot of wonderful things considering the limited budget and the limited number of personnel that they have. But, it is obvious that it is just the tiniest part of what needs to be done.

I went out to the Port of Newark and to JFK in the company of the Fish and Wildlife Service inspectors and agents so I was able to see what they are doing. Those I met were absolutely devoted, dedicated to their work, eager to do it, in fact, almost pathetically glad to have somebody come out and see what they were doing. When I called back after I had been in there, I was told by one of the inspectors that there was an entirely different feeling and everybody had a good feeling because somebody had come from Washington to look at what they have done.

When you go into one of these container warehouses, you can't conceive what it is like. It is as long as a football field and there are all these containers. How can they possibly find all the smuggling that is going on in there with only two agents. That is the way they started: with two agents in Newark; now they have four inspectors to help them. They could easily use 10 or 20 inspectors. They should have them. They have to operate on tips, that is the only way they can possibly do it.

You may have been glancing at my testimony about the rhinoceros pills and I would like to show you some of the things I brought from that visit. This is the container for tiger bone wine and that is supposed to cure whatever ails you, including amnesia and senility.

Senator CHAFEE. Send a little up here.

Mrs. STEVENS. Most of those are Chinese. This is Japanese packaging, it is very up-to-the-moment whereas the Chinese are traditional.

Senator CHAFEE. And these are all ground rhino horns?

Mrs. STEVENS. Yes. At one point this sticker was pasted over the bag so that you wouldn't see that it was labeled rhino horn. This is not what you would call sophisticated. This is unsophisticated smuggling but still it is quite successful. When the Fish and Wildlife Service opened up the container that they were suspicious of I had already been in the office and smelt rhino horn pills. Immediately this aroma became apparent—it isn't that rhino horn smells, but what they put with it has quite an interesting smell and although the listing of what was supposed to be in that huge container was things like joss sticks and noodles, I learned afterward, because I couldn't wait—the longshoremen had to have their lunch at 11:30 so they wouldn't unload—that is another problem for Fish and Wildlife, they can't unload these huge things, they have to have them unloaded and shifted by the longshoremen who have a lot of ideas of their own—but the next day I did find out that there was rhino horn and other illegal items inside that huge container. Which, I also mention, was temporarily lost until the customs inspector told the owner's representive, "Yes, OK, it is lost so I will fine you the $29,000 which is what you say is the value," and then they found it.

About 2 million individual containers entered the country, in 1982. It is an enormous job to try to keep up with.

You mentioned that we had to have all the money go to the international problems, but we also need to watch out for our illegal fur shipments that go through Canada. There is a bad system whereby exporters can put a mixed shipment together and then they do not have to write on the manifest everything that is in there. It is said that it would impede commerce to ask what is in a combined shipment. The regulations do not allow FWS to require identification of furs or leather, several varieties of which may be compressed into a single bale of furs. Those illegal items are often shipped to Canada. Although the law requires that bobcat skins be tagged, they are found to be sold without any tags.

Senator CHAFEE. You say in here that spotted cat fur no longer is popular in the United States, and only the boldest still sport a leopard coat acquired before the passage of the Endangered Species Act.

Mrs. STEVENS. Yes, I met a bold lady the other day who told me she had her coat let out because her shoulders got a little bigger, but she wouldn't tell me who the furrier was that provided the leopard skin.

Senator CHAFEE. You think as a fashion item spotted fur coats are out?

Mrs. STEVENS. Definitely in the United States but not in Germany or Japan. Those that can't afford a leopard or cheetah may be happy buying a bobcat.

Senator CHAFEE. Then you get to your summation about increased enforcement.

Mrs. STEVENS. There are illegal mail shipments, that nobody has mentioned. That is a very serious thing. I think wildlife shipments should not be allowed to come through the mail. It is extremely difficult—all of these are difficult as far as enforcement is concerned, but certainly mail is the most difficult. FWS has made some recent seizures, demonstrating that the mails are being used for smuggling.

Something else that the Fish and Wildlife Service inspectors need is a list of dealers and the commodities that they deal in along with the common name of the species in the different countries, and the Latin name and the range of each species. If such a list were available, at all the ports, it would be a big help.

I have discussed that with inspectors so I know it would be very valuable for them.

You mentioned that there were some big violators. In the group of USDA reports, you will note René Corten who is one of the biggest, and I think we may use the word "crook" in his case without blushing. He was one of those through whom the shipments of birds were sent.

Rick Parsons who was the head of the Permit Office has gone through the swinging door, and we now have him on the other side of the fence. He represented a dealer trying to import gorillas into the United States. It was a very difficult problem to resolve correctly by the Fish and Wildlife Service. To their credit, they refused permission to bring in gorillas, and AAZPA agreed they should not be brought in from the Cameroon. But what has now happened is the seven gorillas have gone to The Netherlands, and theoretically the dealers have not been reimbursed except what

they were "out of pocket", as they claim. However, it is a bad situation, and it is going to lead to more gorillas being shipped out of the Cameroon.

I would like to add on interagency cooperation: the U.S. Department of Agriculture should be asked to work in cooperation with FWS more extensively than it now does.

Senator CHAFEE. Because of their responsibility for quarantine?

Mrs. STEVENS. Yes. They know when there are dead birds. USDA is there. Lots of times you see "no show" with Fish and Wildlife because Fish and Wildlife doesn't have enough agents and inspectors. USDA should immediately inform the Service so they can make a case. If they are not informed—all the importers have to do is to wait a long time. Sometimes they don't get their forms completed until after the birds have been released from quarantine.

Senator CHAFEE. I am glad you brought the USDA problem to our attention here.

Mrs. STEVENS. It may be that Greta Nilsson will have something more to add to this. The end of her testimony has a series of other recommendations which I don't know if you had a chance to look at.

Senator CHAFEE. I just saw the testimony.

Ms. NILSSON. I have been going through the USDA quarantine forms for the period 1980 through 1983 and I have just come upon a large number of protected species that are coming in and apparently not being seized or investigated by Fish and Wildlife. In just a cursory examination, I found over 6,000 individual birds of about 50 or 60 species. These are the ones that had been noted on the quarantine forms. I have not gone through all of the 3-177's yet. This is a preliminary list and usually the quarantine forms only list common names.

So, I think it is pretty obvious that there are a lot of protected birds coming through, and USDA can see them on the quarantine forms, and often Fish and Wildlife may or may not get accurate information.

What I did was get some 3-177's and I found there was quite a bit of difference between the quarantine form and the 3-177 for the same shipment. For instance, one importer brought in some brown Kiwis from New Zealand and didn't put them down in the Fish and Wildlife form.

Senator CHAFEE. What I find amazing is the loss of animals in transit. As you say, the airlines are often at fault. A few weeks ago a shipment of psittacine birds arrived from Argentina with 1,430 dead. If these birds are so valuable and in your testimony, Mrs. Stevens, you talk about the monkeys and the experience you had with Lufthansa in Newark where the monkey importers showed the most callous attitude. Why do they do that?

Ms. NILSSON. The profit margin is so great they can afford a big loss. They pay so little for the birds to the exporters.

Senator CHAFEE. The fact that it occurs shows you are right. You would think where there is a large profit margin it would make you even more careful.

Ms. NILSSON. They would make more money.

Senator CHAFEE. Why this callousness I can't understand. And the importation of finches that become dehydrated, as you mention in your testimony, it seems incredible.

Mrs. STEVENS. Commercial trade in animals seems to bring out the worst in people. That is unfortunately a fact.

The very last recommendation in Greta Nilsson's testimony that only birds that have actually been raised for the purpose, not from the wild, come into this country, should be considered. There is something about what you get just free out of nature that makes people very very callous. I am sorry to have to say that I do not share this idea that the importers are doing all they need to. I certainly think a lot of law enforcement is needed.

Senator CHAFEE. I can picture the scene described in your statement about the Fish and Wildlife inspectors politely requesting the monkeys be moved from the frigid warehouse into the warm room Lufthansa has available for animal shipments. "Even after a second request while we hovered about, our feet getting colder and colder, the Lufthansa men were supercilious. Finally I approached them aggressively and threatened to make trouble for them if they didn't move the monkeys into a warm area." I can picture it.

Mrs. STEVENS. It is the only way.

Senator CHAFEE. I am glad I was not a Lufthansa man.

You got them moved?

Mrs. STEVENS. Finally.

Senator CHAFEE. It is a shame that is the way it has to be done. The problem is, it seems to me, we have drug smuggling every day, except with one added difficulty and that is some of it is legal, some of the importation is legal, that makes the differentiation and the forensic problem.

Mrs. STEVENS. It should only be legal for educational purposes for zoos, that would be the wild part, or else they should have to be captive bred.

Senator CHAFEE. I must admit, I didn't know there was such a demand for palm cockatoos in the United States. Who has all these birds? I am not invited to people's houses.

Mrs. STEVENS. Nor I.

Senator CHAFEE. Thank you very much each of you and we will see what we can do and we hope you will stay in touch with us if you got further thoughts or suggestions.

Mrs. STEVENS. We really appreciate what you have done, without it we wouldn't be anyplace.

Senator CHAFEE. We try.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Statements submitted for the record follow:]

STATEMENT OF J. CRAIG POTTER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION, ON THE IMPLEMENTATION OF THE LACEY ACT AMENDMENTS OF 1981

JUNE 26, 1984

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to explain the progress that we have made in implementing the Lacey Act Amendments of 1981, which combined and modernized the enforcement aspects of the Black Bass Act and the Lacey Act of 1900. We testified in favor of these amendments on April 1, 1981. At that time we, in part, explained how the Lacey Act had been an effective tool in combating illegal wildlife trade for over 80 years, but that the value of wildlife had increased so much that the Act had lost its deterrent effect. More stringent penalties were necessary. The Lacey Act was amended to remedy enforcement problems as a result of your efforts and became effective two years ago last November. It is indeed timely to examine the progress that has been made in combating illegal wildlife activity and the effectiveness of these Amendments.

While the Lacey Act Amendments of 1981 have been extremely effective against illegal interstate commerce in fish and wildlife, I will focus my remarks this morning on the illegal international wildlife trade for it was one of the major concerns of Congress in enacting the Amendments. I will include the various statistical information requested by your June 13 letter. In doing so, however, I would like to point out that the U.S. Fish and Wildlife Service continues to consider the conservation and management of native species as our

primary concern. Our enforcement program is concerned with a number of statutes protecting both native and foreign wildlife and we believe that the balance of our efforts is in keeping with the intent of Congress.

Illegal Wildlife Trade

In order to have an appreciation for the illegal wildlife trade it is necessary to have an understanding of the volume of wildlife imported and exported. The United States has long been recognized as a major consumer of wildlife and wildlife products. Since 1968 the Service has maintained records of wildlife imports, and has compiled annual reports of the volume of wildlife and wildlife products imported into the country. Beginning in 1980 the Service computerized records of wildlife imports and exports. This has permitted a more accurate compilation of wildlife traffic, as well as a more detailed analysis of the associated information.

Included for the record at Appendix A are two tables showing the total volume and value of wildlife by category imported into and exported from the United States during 1980, 1981 and 1982. As you can see, the total number of shipments has exceeded 45,000 each year. The total number of items imported and exported in 1980 was 223,593,816. In 1981 the total number of items increased to 305,336,771. This figure declined to 242,732,543 in 1982.

The volume of wildlife shipments tells only part of the story. The value of this traffic is equally astounding. The total value of wildlife imported into and exported from the United States in 1980 was over $528 million. In 1981 this value had increased to $918 million. In 1982 the total value declined to $756.6 million, perhaps reflecting the overall state of the economy for that year.

The Service employs 36 Wildlife Inspectors to monitor trade and interdict illegal activity. In 1980 these Wildlife Inspectors physically inspected portions of 17,303 of the 45,314 wildlife shipments imported and exported. In 1981 a total of 18,177 shipments were inspected out of the 56,413 shipments declared. Of the 53,912 shipments declared in 1982, 14,443 were physically inspected. In general, we are capable of inspecting portions of about 26 percent of all wildlife imports and exports.

Your attention is directed to the table at Appendix B entitled 1982 Import/Export Seizures. From this table you can see that 1,457 of the 14,443 shipments inspected were seized. These seizures involved 1,058,334 items of wildlife or wildlife products. Of these seizures, 1,237 were made under authority of either the Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES) or the Endangered Species Act, and 85 were made under authority of the Lacey Act. Of course all of these seizures involved violations of the Lacey Act based upon an underlying violation of another Federal wildlife law. However, in these cases the Service has generally taken action based upon the underlying Federal law violated rather than invoking the provisions of the Lacey Act.

While these seizures indicate a level of illegal activity detected, we are confident that a significant volume of illegal widlife trade still enters the country. This is possible because we are not able to physically inspect all shipments and even for those that are inspected importers often use false documents or other schemes to hoodwink inspectors. In addition, the only trade that is declared and becomes part of our statistics are ostensibly legal shipments which the importer wishes to bring to the attention of the government. We know for a fact, that many illegal wildlife shipments enter and leave the country without proper declaration and thus are smuggled. For example, we believe that there are still as many as 25,000 illegal psittacine birds entering the country each year across the Mexican border. The exact extent of illegal wildlife smuggling is, of course, impossible to assess although we believe that it is still a significant problem.

Investigative Activity

Now, Mr. Chairman, let me turn to a discussion of our investigative activity.

I want to emphasize that our investigative staff of 200 Special Agents is stationed throughout the country and is charged with enforcement of all the laws that have been enacted to protect foreign and native species of wildlife. As a result, we do not have Special Agents assigned only to the enforcement of laws concerning foreign species.

At Appendix C is a table which shows all investigative matters handled by the Service for the last four fiscal years. This table is broken down into 19 classifications on which statistics are maintained. These categories are basically statutes and show the number of cases open during the year as well as those closed and left pending at the end of the year. For the Lacey Act, you will note that the number of cases closed has remained fairly constant over the last four years showing a slight decrease in Fiscal Year 1983 . This corresponds to a general decrease in overall cases closed during FY-83. I have included another table at Appendix D which shows the disposition of all cases for the last four fiscal years broken down by criminal and civil actions. These two charts have been presented primarily to illustrate to the Subcommittee the vast array of laws that we enforce and the general scope of our investigative activities.

Let me turn now more specifically to the Lacey Act Amendments of 1981. Criminal convictions in 1980 and 1981 were 95 and 136 respectively. After the Lacey Act Amendments became effective, criminal convictions rose to 221 in 1982 and 271 in 1983. Between the year before the amendments became effective, Fiscal Year 1981, and Fiscal Year 1983, criminal convictions have increased 100 percent. This increase together with an associated decrease in civil Lacey Act assessments is illustrated by a chart at Appendix E. Of these criminal convictions obtained since the Amendments became effective, 12 defendants were convicted of 13 felony counts involving foreign species. Moreover, there have been 13 felony convictions resulting from illegal activities with native species for a total of 26 felony convictions during the two years since the Amendments became effective.

When you look at penalties imposed by the courts you can see that the seriousness of wildlife crime has been given due recognition. Total criminal fines and costs collected in Fiscal Years 1980 and 1981 amounted to $125,512, whereas for Fiscal Years 1982 and 1983 they amounted to $221,414, an increase of almost 100 percent. Similarly, civil penalties imposed by the Department of the Interior amounted to $13,010 in the two years preceding the Lacey Act Amendments, and $81,581 in the two fiscal years following enactment of the Amendments, an increase of over 500 percent.

More important, however, is the jail time imposed. In the two fiscal years before the Lacey Act Amendments were passed, total jail sentences imposed for criminal convictions amounted to 9,053 days. In the two years following the Lacey Act Amendments jail sentences amounted to 27,357 days, for an increase of over 200 percent. These increases in fines, costs, civil penalties and days of imprisonment imposed are shown on another chart at Appendix F.

Moreover, during the current fiscal year alone we have convicted 29 additional individuals for felony violations of the Lacey Act. That brings the total defendants convicted of felonies to 54 as of today. Of these, 22 involved foreign species and 32 convictions were relatd to native species.

This data clearly supports my belief that we have been aggressively implementing the Lacey Act Amendments and that they, in fact, have become a major tool in our arsenal to combat illegal wildlife crime. I would like at

this time, Mr. Chairman, to give you a brief synopsis of several of the major investigations involving foreign wildlife that we have been involved in during the past two and one half years:

° In November 1983, over 100 palm cockatoos were seized by the Service. They had been illegally exported from Indonesia, the country of origin, and then imported into the United States from Malaysia in violation of the Lacey Act. The importers admitted civil liability and forfeited the birds to the Service during February 1984. The birds have an estimated retail value of $900,000.

° In the past two years a series of investigations in the southern California area have resulted in felony charges against 29 defendants involved in the illegal importation of psittacine birds. Nineteen of these defendants have been convicted of Lacey Act felony violations. These cases resulted in the seizure of 777 psittacine birds valued at $400,000 on the U.S. market.

° In 1983 a total of more than 690,900 items of oriental "medicines" containing ingredients from endangered rhinoceros and tigers were seized from containerized shipments at the Port of New York. The total value of these seizures was over $710,000.

° Since September 1981 one major department store has been investigated with respect to six separate violations of CITES and the Endangered

Species Act for illegally importing reptilian handbags and shoes into the United States. These violations have resulted in seizures of 644 illegal wildlife products. This matter is currently pending before the Department's Solicitor.

° In August 1983, the Service seized 674 caiman hides imported by a Massachusetts firm. The hides were documented as being from the common Caiman. Examination by our experts revealed the hides were actually from the Yacare, an endangered species. The estimated value of these hides is $30,000.

° During December and February of the last fiscal year the Service seized two shipments of Green Sea Turtle soup. A total of 12,576 cans of soup were seized, their value was over $47,000. The Service proceeded under the Endangered Species Act and obtained forfeiture.

° Recently four shipments of blue coral from the Philippines with a retail value of over $100,000 were seized under the Lacey Act at the Port of New York. (Coral was not covered under the Lacey Act until the 1981 amendments.) The cases are pending.

° Last fall two Texas men were sentenced for felony violations of the Lacey Act involving smuggling wildlife into the United States from Mexico and illegal airborne hunting. One of these men, the pilot and owner of the helicopter involved, was sentenced to one and one-half

years in Federal prison, fined $20,000, and placed on five years probation. The other man, a sporting goods dealer, was sentenced to one year in Federal prison and fined $10,000. In addition, five other defendants were given lesser sentences for misdemeanor violations in the same case.

New Enforcement Initiatives

While we believe we are doing a good job coping with the tremendous volume of imports and exports and the illegal trade, there are several new initiatives which we plan to take that I would like to share with the Subcommittee.

User Fees.

Regulations were proposed in the Federal Register on June 18, 1984, which would implement user fees in connection with commercial wildlife importations and exportations. That is, under these proposed regulations all importers and exporters of commercial wildlife shipments would have to pay a fee of $25 per shipment. A copy of these proposed regulations are at Appendix G for your information. The concept of user fees is not new and is clearly authorized by the Congress under the authority of the Endangered Species Act. While we have been charging user fees only at non-designated ports of entry, it has been determined that if user fees were imposed at all ports of entry on commercial shipments the additional revenue would allow the Service to provide a better

service to importers and the industry. In addition we will be able to increase our enforcement efforts at the ports of entry and not only interdict more illegal shipments, but create a sufficient deterrent to curtail a major part of the illegal wildlife trade in this country.

While we are certain that the proposed regulations for user fees will create controversy and we will probably receive many adverse comments from the industry, we hope that industry representatives will recognize the benefit to legitimate industry that is derived from an accelerated and aggressive enforcement program that will keep illegal wildlife off the black market. We suspect that the increased cost to the industry will be passed to the consumer and this is not inappropriate for a highly regulated industry involving the importation and exportation of wildlife.

Notification of Foreign Laws.

We have provided financial support to the World Wildlife Fund during the past year for their project to compile a reference library of foreign wildlife laws. Their initial effort was to concentrate on the wildlife laws of South America and this has been completed. Our Division of Law Enforcement has recently hired a new attorney whose responsibility will be, among other things, to maintain liaison with the World Wildlife Fund staff attorney

working on this project so that our agents and inspectors can be fully informed on foreign law. We should be in a much better position to make seizures and bring about successful prosecutions as a result of this joint project.

Moreover, after consultation with the World Wildlife Fund, various industry representatives, and our attorneys, we have decided to initiate in the near future a procedure whereby the Service will publish notice of trade bans in the Federal Register or in trade journals after verifying the exact nature of the ban through official channels. This will not only put the industry on notice as to the latest restrictions on wildlife trade, but will hopefully create a deterrent for those involved in illegal activities. While we recognize that we cannot, nor will we attempt, to publish notices of all such foreign wildlife laws or identify our complete enforcement strategy, we will attempt to provide a service to the industry and the world's wildlife resources. We will make certain that this process will not shift the burden from the importer or exporter to detemine the various State or foreign laws so that the Lacey Act is not violated.

We have been reluctant to embark on such a project in the past because not only was our own staff insufficient to maintain such information in a timely manner, but we were concerned that such notices might provide a defense for someone illegally importing wildlife when such notice had not been published. We have now been assured by the Department of Justice that such a procedure can be launched without such reservations. The continuing efforts of the

World Wildlife Fund have also made it possible for us to have more timely information and we believe that this new project will be beneficial.

Industry Awareness and Cooperation.

As another new endeavor aimed at the reduction of illegal wildife trade, we are exploring expansion of our public information activities. The Service has long publicized results of major law enforcement investigations in the belief that such publicity will deter wildlife crime. It also generates many additional feature articles which continue to inform the public about the importance of wildlife and the need for public cooperation in suppressing illegal wildlife activities. We believe that an expanded program in this area in cooperation with various conservation organizations such as the World Wildlife Fund, will be beneficial. This combined effort should focus on gaining the understanding and support of regulated industries. Preliminary explorations with various industry representatives looks promising. We plan to expand use of airport displays, donation of seized property for educational purposes to various institutions and museums, publication of more brochures and fact sheets, and specific liaison with industry and media representatives to educate industry and the consumer.

Computerized Intelligence Analysis.

In July of last year the Service implemented a Law Enforcement Management Information System (LEMIS) which is a computerized data base system designed

to serve all enforcement activities. It has automated our case reporting system to better coordinate investigations and maintain statistics. The import/export declaration subsystem will automate import and export declarations filed with the Service and improve our capability to monitor wildlife trade and interdict illegal shipments. Although the system has been implemented for nearly a year, it will take many more months of training and data manipulation before the system can be fully operational. We believe this computer will become a major tool in monitoring and controlling imports and exports.

We have now increased our staff in the Intelligence Unit of our Division of Law Enforcement and plan to expand a program of monitoring declarations and conducting followup investigations of illegal wildlife imports and exports. Moreover, we entered into a cooperative agreement with the Department of Justice last year whereby they are assisting in funding the development of a specific intelligence subsystem for LEMIS. The contractor has provided an expert in criminal intelligence to conduct an analysis of our intelligence function and provided recommendations on the design of a computerized data base intelligence subsystem. We believe that this overall effort will greatly increase our enforcement capabilities and effectiveness.

Enforcement Problems

In spite of our accomplishments and the new enforcement initiatives that we plan to make, there are still a number of major enforcement problems.

Documents.

One of the major avenues for the entry of illegal wildlife into this country is by way of false documents. That is, a shipment of wildlife is declared openly and the documents that accompany the shipments are false for a variety of reasons. First, they may have been counterfeited but appear to be legitimate. They may have been obtained by bribing officials in foreign countries and while valid on their face, have been obtained for illegal purposes. In other sitautions, the document may claim that species were bred in captivity while most experts would agree that it is impossible to breed such species in captivity in the quantities being imported. At other times, documents may state that the animals came from a particular country of origin when in fact it is highly unlikely that those species and that quantity could have been taken from the wild in that particular country.

These kinds of document fraud present monumental problems for the enforcement officer and the prosecutor. First of all, there is the problem of challenging the veracity of foreign government permits. Second, there is the problem of proof, that is to say, having sufficient evidence to establish that these animals could not have come from the particular country or were not bred in captivity. While it is easy to find people who will make such statements, it is difficult to find experts who are qualified in the field and willing to testify in court that it is impossible for such and such to have taken place. It is also difficult in some situations to get reliable information from foreign countries. It is certainly not impossible to make document cases, and

we are involved in many investigations of this type at the current time. We merely point out that this is a significant problem and takes a great deal of investigative resources.

Forensics.

Another problem involves the forensic identification of seized evidence. As you well know, to prosecute wildlife violators, it is necessary for us to obtain accurate species-source identifications of wildlife parts and products that have been seized as evidence. That is, identifications which are made by highly qualified forensic experts capable of presenting expert testimony in court. Unfortunately, the reality of the situation today is that the Service has difficulty in obtaining reliable species-source identifications of many--if not most--of the wildlife parts and products being imported and sold throughout the United States.

We have attempted to make use of existing crime laboratories at the Federal, State and local levels for our evidence identifications, but have discovered that overwhelming human caseloads, low priorities assigned to wildlife cases, and the lack of researched ID procedures and documented comparison standards preclude this cost-saving approach.

At the moment, we are attempting to resolve our forensic identification problems by using staff members of museums, zoos, and universities. For reasons including a lack of understanding of court mandated evidence-handling

needs, lack of evidence security, absence of established ID procedures, reluctance to testify in court, and lack of forensic expertise on the part of our volunteers, this short-term solution has proven unsatisfactory.

Containerized Cargo.

Approximately 90 percent of all known wildlife shipments passed through our international airports. However, a highly significant volume enters by seagoing vessel in the form of containerized cargo. This type of import comes through the various seaports around the United States. In 1982 approximately 1,900,000 individual containers of goods entered this country and about the same number were exported.

Containers generally come in two sizes, a small container is 8'x8'x20' and the larger one at 8'x8'x40'. They average more than seven tons of cargo per container. Containers are sealed and can be accessed from only one end. Due to the size, volume of goods and limited access, this type of shipment is extremely difficult for our Wildlife Inspectors to inspect and an extremely easy way to smuggle wildlife parts and products into the United States.

Most of the illegal wildlife found in containers is located in the very front end of each container. In order to assure compliance, as much as seven tons of legal products have to be removed from a container before we can reach the area where most illegal merchandise is located. Due to the highly unionized labor force at most seaports, the unloading of containers must follow union

procedures. Thus, it takes an average of three to six hours to strip and inspect just one container.

To illustrate the magnitude of the problem let me give you one example. In Fiscal Year 1983 we fully inspected 82 containers at the seaport facilities at the Port of New York and made 16 seizures worth a total of $710,511. The wildlife products have been forfeited and importers assessed $16,385 in civil penalties.

Care of Live Animals.

Another problem facing the Service is the proper care and feeding of live animals after seizure. This is particularly acute as it relates to psittacine birds because they often require special handling and are susceptible to disease. We have been working with the American Association of Zoological Parks and Aquariums (AAZPA) toward an agreement that will make it easier for the Service to obtain proper handling of seizures. We are close to agreement in this matter, which would be a major improvement in the handling of live animals. In addition, Congress has just passed a bill authorizing the use of sums collected from fines, civil penalties, and forfeitures to offset expenses involved in caring for live animals.

Summary

In summary, Mr. Chairman, let me emphasize that while I believe that we have been doing an extremely commendable job, we have by no means stopped the

illegal trade in wildlife and their parts and products. We realize there is still a significant illegal trade in wildlife such as psittacine birds, crocodilian hides and skins, ivory, and rhino horn.

We continue to maintain a presence of uniformed Wildlife Inspectors at selected ports of entry to interdict illegal shipments at the border whenever possible. We are equipped with a small staff of criminal investigators to conduct investigations as opportunities present themselves. Our priorities are to target on those illegal activities involving both domestic and foreign species, that have the greatest impact on the resource. We generally focus on those activities which are commercial or large-scale operations. We also conduct wildlife law enforcement activities which cannot be done by States and local law enforcement bodies as an effort to help protect and manage our native species.

New enforcement initiatives are being launched to help combat illegal wildlife traffic. We have proposed implementing user fees to supplement our inspection program at the prots of entry. A new system of official notices to the public concerning foreign wildlife laws should assist the regulated industries and deter illegal trade. An expanded public information program is also under consideration. Computerization of investigative and import/export records coupled with an expanded intelligence analysis capability will also increase our enforcement effectiveness.

I believe the Lacey Act Amendments of 1981 have been extremely effective in helping us combat illegal commercial wildlife activity. The fact that we have already obtained 54 felony convictions speaks for itself. Criminal prosecutions have more than doubled since the amendments were enacted. Total sentences in the form of dollars and prison time have increased many fold. In addition, there are a number of investigations, both covert and overt, underway at this moment, but I am not at liberty to discuss.

There are a number of major problems facing our enforcement officers today. We are working diligently to solve these problems, but some of them we know may be insolvable. One problem is the sheer magnitude of wildlife imports and exports that we deal with every day. I would like at this time to invite the Subcommittee and staff members to visit the Port of New York to get a first-hand look at wildlife enforcement problems. I think you would find this extremely interesting and hope you will be able to fit it into your busy schedules.

Finally, Mr. Chairman, we would like to thank you for this opportunity to discuss our wildlife enforcement operations and will be pleased to answer any questions.

Attachment A

WILDLIFE IMPORTS AND EXPORTS
1980, 1981, 1982

Wildlife Category	Live Items/Value			Manufactured Items/Value			Raw Items/Value		
	1980	1981	1982	1980	1981	1982	1980	1981	1982
Amphibians	458,379 $137,209	818,395 $164,380	684,836 $1,030,957	1,874 $9,950	667 $10,105	936 $32,520	12,639 $10,980	38,456 $160,798	818,633 $4,193,900
Birds	679,607 $10,025,749	610,036 $164,380	985,167 $11,224,293	3,917,184 $4,408,352	19,288,553 $10,755,727	289,871 $2,482,468	8,448,647 $7,862,301	2,670,127 $4,793,787	304,779 $2,949,489
Fish (Non-Tropical)	701,905 $166,600	1,536,623 $296,194	1,306,873 $207,525	289,107 $2,124,542	311,458 $1,149,241	1,368,277 $19,983,849	505,206 $2,269,639	1,143,571 $3,404,181	548,820 $896,518
Mammals	45,749 $3,990,598	39,336 $4,517,324	36,659 $6,589,540	9,309,262 $135,091,356	10,482,474 $172,739,235	7,406,663 $179,942,871	15,564,976 $278,363,261	26,216,349 $549,199,594	17,919,615 $404,731,325
Reptiles	514,597 $2,824,776	2,006,076 $2,209,457	2,381,959 $1,755,974	2,266,665 $33,187,569	5,744,764 $57,218,031	4,904,050 $53,696,789	2,370,195 $17,364,709	5,591,363 $58,092,546	2,507,955 $30,907,069
Tropical Fish	128,237,273 $17,429,030	140,012,074 $19,862,998	133,298,637 $18,193,645	3,987 $15,267	31,773 $21,048	32,496 $22,980	156,744 $60,368	147,114 $12,989	78,736 $9,402
Coelenterates	132,250 $114,274	172,905 $135,773	118,918 $112,618	1,006,044 $312,779	1,044,661 $401,585	1,684,724 $1,781,596	1,292,286 $139,226	947,530 $159,644	297,397 $106,915
Crustaceans	958,314 $213,058	2,886,914 $1,422,253	1,264,541 $2,991,914	2,734 $7,167	16,470 $23,536	16,812 $3,490	16,463 $18,780	8,704 $5,105	6,068 $71,672
Mollusks	42,186 $41,998	1,173,105 $267,655	273,127 $34,629	33,548,605 $10,333,332	64,709,910 $17,577,177	57,783,468 $13,557,188	12,107,022 $1,931,938	16,328,356 $3,258,816	13,849,505 $2,536,175
Others	166,517 $199,110	156,704 $178,973	6,006,831 $218,370	516,756 $290,020	457,194 $284,052	1,226,237 $524,487	320,644 $36,768	665,109 $200,612	350,831 $131,228

WILDLIFE IMPORTS AND EXPORTS
1980, 1981, 1982

Wildlife Category	TOTAL Items/Value 1980	TOTAL Items/Value 1981	TOTAL Items/Value 1982
Amphibians	472,892 $158,139	857,518 $335,283	1,504,405 $5,257,377
Birds	13,045,438 $22,296,402	22,568,716 $25,133,342	1,579,817 $16,656,250
Fish (Non-Tropical)	1,496,217 $4,560,781	2,991,652 $4,849,616	3,223,970 $21,087,892
Mammals	24,919,987 $417,445,215	36,738,159 $726,456,153	25,362,937 $591,263,736
Reptiles	5,151,457 $53,377,054	13,342,203 $117,520,034	9,793,964 $86,359,832
Tropical Fish	128,398,004 $17,504,665	140,190,961 $19,897,035	133,409,869 $18,226,027
Coelenterates	2,430,580 $566,279	2,165,096 $697,002	2,101,039 $2,001,129
Crustaceans	977,511 $239,005	2,912,088 $1,450,894	1,287,421 $3,067,076
Mollusks	45,697,813 $12,307,268	82,291,371 $21,103,648	71,906,180 $16,129,992
Others	1,003,917 $525,898	1,279,007 $663,637	7,583,899 $874,085

TOTAL FIGURES FOR 1980,1981,1982

	1980	1981	1982
Items	223,593,816	305,336,771	257,753,501
Value	$528,980,706	$918,106,644	$760,923,396
Shipments	45,314	56,418	53,912

1982 IMPORT / EXPORT SEIZURES

AUTHORITY	IMPORTS		EXPORTS	
	Shipments	Items	Shipments	Items
LACEY ACT	85	557	1	2
ENDANGERED SPECIES ACT / CITES	1,237	1,057,013	2	495
OTHER	135	764	1	3
TOTAL	1,457	1,058,334	4	500

Attachment C

U.S. Fish and Wildlife Service
Division of Law Enforcement

INVESTIGATIVE MATTERS

Classification	FY 1980			FY 1981			FY 1982			FY 1983		
	Opened	Closed	Pending	Opened	Closed	Pending	Opened	Closed	Pending	Opened	Closed	Pending
1. Assault	8	12	6	8	12	2	6	3	5	1	6	2
2. Bald Eagle	423	353	262	369	321	310	380	393	297	503	531	270
3. Black Bass	151	153	69	73	70	72	113	76	109	121	61	169
4. Lacey	876	829	626	925	779	772	791	811	752	543	731	562
5. National Wildlife Refuge	3,757	3,802	1,101	3,280	3,374	1,007	4,042	4,152	897	2,333	2,423	762
6. Migratory Bird stamp	789	852	86	562	540	108	473	528	53	431	434	50
7. Migratory Bird Treaty	5,542	5,704	1,627	4,820	4,697	1,750	4,176	4,344	1,582	3,291	3,751	1,083
8. Endangered Species	4,321	4,295	2,272	2,814	2,749	2,337	2,234	2,860	1,711	2,619	1,960	2,367
9. Marine Mammal Protection	168	161	116	215	137	194	140	125	209	79	89	199
10. Upper Mississippi River Refuge	93	78	16	105	115	6	72	58	20	47	63	4
11. Bear River Migratory Bird	6	7	0	0	0	0	0	0	0	0	0	0
12. Fish and Wildlife Recreation	1	0	1	0	1	0	0	0	0	0	0	0
13. Airborne Hunting	39	37	20	14	11	23	27	21	29	14	17	25
14. Tariff Classification	14	21	2	13	13	2	19	19	2	7	8	1
15. Other Federal Laws	26	104	78	21	84	15	69	55	29	25	41	10
16. State Laws	499	506	113	390	400	103	424	446	81	206	219	65
17. All Other Investigations	386	284	112	832	834	110	1,317	1,305	122	1,167	1,211	36
18. Permit Investigations	5,137	4,501	1,250	5,080	5,735	695	4,021	3,923	793	3,515	3,379	735
19. Import/Export Licenses	0	0	0	1,374	1,360	14	287	256	45	323	291	40
TOTAL	22,236	21,699	7,857	20,895	21,232	7,520	18,591	19,375	6,736	15,224	15,215	6,380

Attachment D

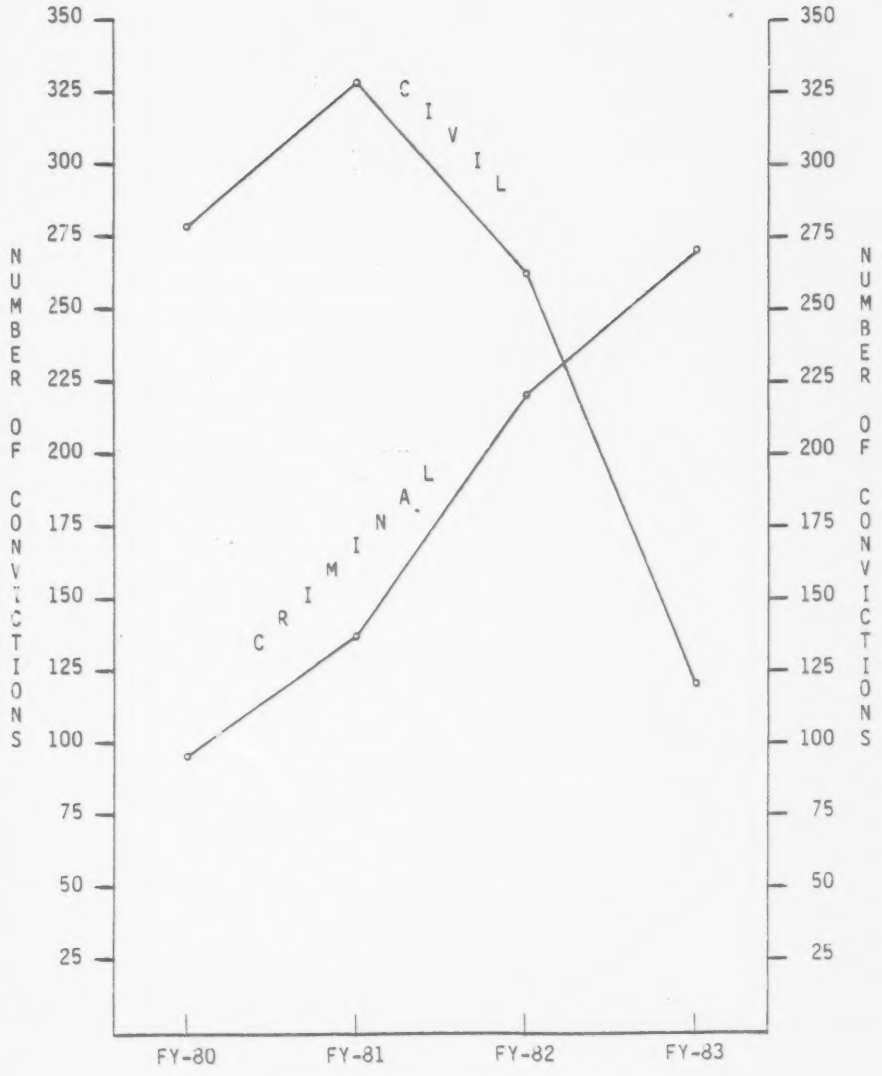
Case Disposition

Fiscal Year	Criminal Actions				Civil Actions			Returns to the Government* ($000)
	Convictions	Conviction Rate(%)	Fines ($000)	Jail (Years)	#of Penalties Assessed	Penalties ($000)	Forfeitures ($000)	
1980	10,698	94	877.6	95	4,784	36.8	1,166.6	2,081.0
1981	10,576	95	983.4	118	2,170	47.1	575.4	1,605.9
1982	9,656	94	1,120.3	151	2,665	80.2	892.9	2,093.4
1983	6,998	94	877.5	114.6	1,261	108.1	404.0	1,389.6

* Includes criminal fines and civil penalties assessed as well as the value of property forfeited to the Government.

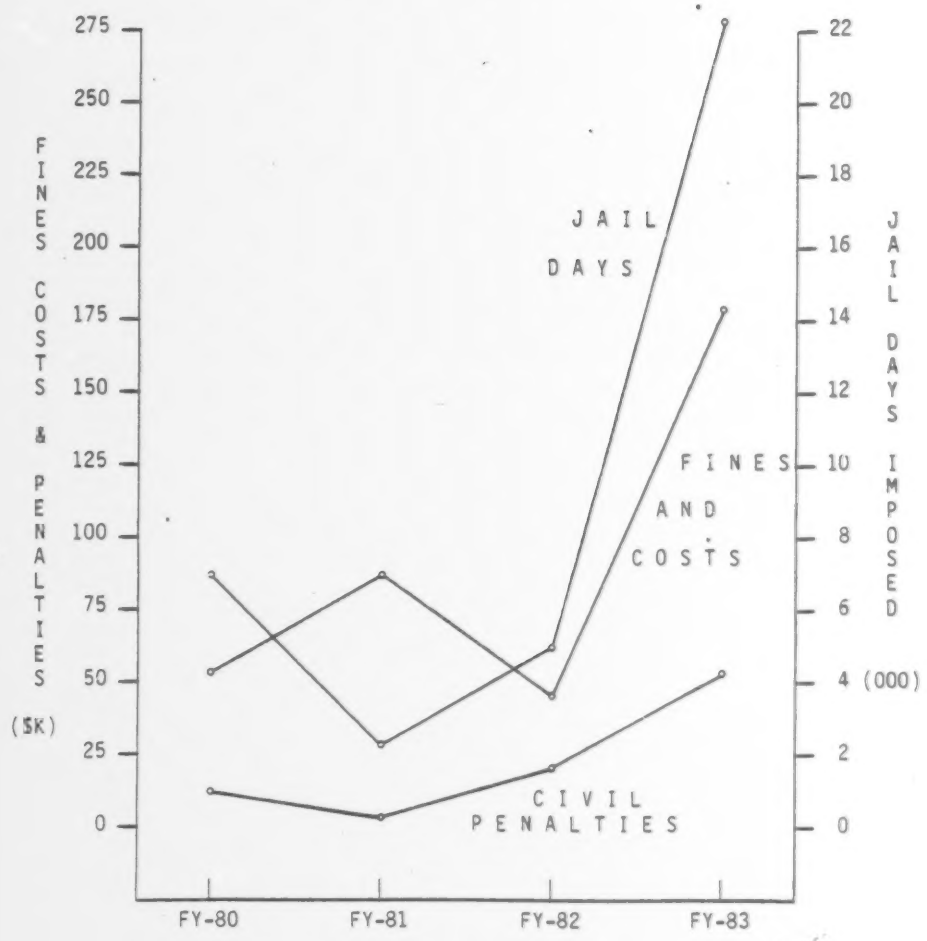
Attachment E

CHANGE IN CRIMINAL AND CIVIL LACEY ACT CONVICTIONS



Attachment F

CHANGE IN FINES, COSTS, CIVIL PENALTIES, AND JAIL DAYS
RESULTING FROM
LACEY ACT CONVICTIONS



Attachment G

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

Wildlife Import/Export License Fees; Inspection Fees Whenever Wildlife is Imported Into or Exported From the U.S. by Persons Engaged in Business as an Importer or Exporter of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to raise the biennial fee for a wildlife import/export license from $50 to $250 and to charge a new $25 inspection fee for each wildlife shipment imported into or exported from the U.S. by any person engaged in business as an importer or exporter of wildlife. These "user" fees are authorized by both the Endangered Species Act of 1973 and general statutory authority permitting Federal agencies to charge fees, and would be nothing more than charges collected from recipients of Service-regulated benefits or services that are supplied to them upon request. In effect, these recipients would reimburse the Service for expenses incurred to provide them with these benefits or services, including the costs to maintain the regulatory system under which they are delivered.

DATE: Comments on this notice must be received by August 17, 1984.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C. between 7:45 a.m. and 4:45 p.m. Comments should bear the identifying notation REG 14-02-002069. All materials received may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005, telephone: (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) enforces a variety of laws relating to the importation, exportation, and transportation of wildlife. Some of these laws apply only to certain species of wildlife, while others are of general applicability. Based on these laws, the Service regulates with varying emphasis the importation, exportation, and transportation of wildlife along the functional lines of wildlife transactions. This organization provides uniform rules and procedures for monitoring and controlling the movement of wildlife within a comprehensive, understandable, and workable system.

To monitor legal wildlife trade and interdict illegal importations and exportations of Federally protected wildlife, the Service employs 38 uniformed Wildlife Inspectors at designated, border, and special ports of entry throughout the U.S. These inspectors work side-by-side with Customs and Agricultural inspectors, provide expertise in wildlife law and wildlife identification. Wildlife inspectors check the legality of various

import/export permits and other documents and conduct physical inspections of wildlife to interdict illegal wildlife shipments.

To monitor the activities of people who are engaged in business as importers or exporters of wildlife, the Service requires these people, with some limited exceptions, to obtain a wildlife import/export license issued by the Service. This requirement appears in 50 CFR 14.91–14.93.

Through both of these efforts the Service provides resources (i.e., services) that benefit identifiable recipients. These recipients are commercial importers and exporters of wildlife. Currently, the costs of these services are only partially borne by them. The remainder of the costs are paid with funds appropriated by Congress. The Service's goal is to have those who use the services pay for them, and shift the burden of payment away from the general public by eventually eliminating the need to rely upon appropriations to fund these services. Such "user fees" are authorized by both the Endangered Species Act of 1973 and general statutory authority permitting Federal agencies to charge fees for rendering particular services.

Two types of user fees are involved. One, the fee for a wildlife import/export license, would be raised from $50 to $250. This increase would reimburse the Service for expenses connected with issuing licenses as well as expenses connected with administering the license, such as compliance inspections. A licensee must comply with certain statutory and regulatory requirements to obtain and maintain a license. Receipt and retention of the license is of unquestionable benefit to the licensee. By conducting routine compliance inspections of licensees, the Service expects to assist licensees in complying with the statutory and regulatory requirements necessary to retain the license. The other, a wildlife import/export inspection fee of $25, would be charged for each wildlife shipment imported into or exported from the U.S. by any person engaged in business as an importer or exporter of wildlife. This would be a new fee charged to offset expenses incurred by the Service to inspect wildlife importations and exportations. The Service currently collects inspection fees from importers and exporters who use non-designated ports to import or export wildlife, resulting in annual revenues of approximately $5,000. This "pay as you go" philosophy would be substantially expanded to include inspections conducted for all commercial importations and exportations. During 1982, there were approximately 38,041 commercial wildlife imports and 11,330 commercial wildlife exports.

Authority to collect user fees is found in section 11(f) of the Endangered Species Act of 1973, which states in relevant part:

> The Secretary [of the Interior] * * * may * * * charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections. * * * All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. * * * Pub. L. 93–205, 87 Stat. 899 (16 U.S.C. 1540(f)).

User fee authority is also found in 31 U.S.C. 9701, formerly Title 5 of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), commonly referred to as the User Charge Statute, which reads in relevant part as follows:

> *Section 9701 Fees and charges for Government services and things of value.*
>
> (a) It is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.
>
> (b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency. * * * Each charge shall be—
>
> (1) Fair; and
>
> (2) Based on—
>
> (A) The costs to the Government;
>
> (B) The value of the service or thing to the recipient;
>
> (C) Public policy or interest served; and
>
> (D) Other relevant facts.
>
> (c) This section does not affect a law of the United States—
>
> (1) * * *
>
> (2) Prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.
>
> (Pub. L. 97–258, 96 Stat. 1051)

Wildlife Import/Export License Fees

On August 23, 1980 (45 FR 56668), the Service published a final rule revising 50 CFR Part 14 (Importation, Exportation, and Transportation of Wildlife) to implement provisions of a number of wildlife laws enforced by the Service. As part of that rulemaking and under authority of section 9(d) of the Endangered Species Act of 1973 [16 U.S.C. 1538(d)], and import/export license requirement was imposed on any person who engages in business as an importer or exporter of fish or wildlife unless that person imports or exports certain excepted wildlife or falls within one of the categories of persons excepted from the requirement. A person is engaged in business as an importer or exporter of wildlife if he/she devotes time, attention, labor, or effort to any activity for gain or profit that involves the importation or exportation of wildlife. The license requirements, which is found in §§ 14.91–14.93, went into effect on January 1, 1981.

Licensees now must: (1) Pay $50 for a two-year license, (2) keep certain records and retain them for five years, (3) allow the Service to inspect their records and inventories of imported wildlife, and (4) file any requested reports.

Under this proposal, the license fee would be raised from $50 to $250. This increase would cover the costs to issue or renew licenses and the costs to conduct compliance inspections of licensees. It costs approximately $80 to issue a wildlife import/export license and slightly less to renew one. This cost includes the fixed and variable costs associated with processing all of the necessary paperwork to issue or renew a license. There is also an additional 15% administrative charge to process fee collections.

During FY 1985 and beyond, Special Agents of the Division of Law Enforcement are expected to increase emphasis on compliance inspections of licensees by inspecting records and inventories of imported wildlife at their place of business and by inspecting records they have filed with the Service. While the exact cost of such inspections cannot be determined yet, the average hourly pay rate alone for a journeyman agent during FY 1984 is $24. During FY 1984, it is expected that the Service will incur approximately $27,000 in total costs for each journeyman field agent (excluding those agents stationed in Alaska where the total costs for each are significantly higher), costs which include compensation, travel and transportation, vehicle operation, and miscellaneous expenses (supplies, equipment repair, training, etc.). These total costs, however, do not include operational and support services provided by the Washington Office of the Division of Law Enforcement.

Because compliance inspections are expected to require about 4 hours at $28/hour) of journeyman agent time per year per licensee beginning in FY 1985, the total cost to conduct compliance inspections during the tenure of the license (2 years) is approximately $190 (8 hours of journeyman agent time at $26/hour). Adding this cost to the cost of issuing or renewing a license, which is $60, results in a total cost of $250 for

each license. Thus, the license fee is proposed to be raised to $250.

Compliance inspections, whether conducted at the licensee's place of business or at a Service law enforcement office where documents submitted by the licensee are on file, have a two-fold purpose. One is to insure that the licensee is satisfying the license conditions. The other is to insure that the licensee is otherwise complying with laws and regulations enforced by the Service that apply to the licensee's activities. Together, these inspections detect violations which can be remedied short of criminal sanctions. For the licensee, this may be critical. Criminal violations of either the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) or the Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) subject the licensee to a range of sanctions, including possible modification, suspension, cancellation, or revocation of the wildlife import/export license. When such action is taken by the Service, the licensee is not entitled to any compensation, reimbursement, or damages 16 U.S.C. 1540(b)(2) and 3373(e).

Inspection Fees

The Service's authority to inspect wildlife imports and exports is found in several statutes. For instance, section 11(e)(3) of the Endangered Species Act of 1973 states:

> Any person authorized by the Secretary [of the interior] * * * may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Pub. L. 93–205, 87 Stat. 889 (16 U.S.C. 1540(e)(3)).

Similar authority also appears in section 6(b) of the Lacey Act Amendments of 1981:

> [Any person authorized to enforce this chapter] may detain for inspection and inspect any vessel, vehicle, aircraft, or other conveyance or any package, crate, or other container, including its contents, upon the arrival of such conveyance or container in the United States or the customs waters of the United States from any point outside the United States or such customs waters, or, if such conveyance or container is being used for exportation purposes, prior to departure from the United States or the customs waters of the United States. Such person may also inspect and demand the production of any documents and permits required by the country of natal origin, birth, or reexport of the fish or wildlife.

Wildlife inspections are usually initiated by the presentation of a document package at an office of the Division of Law Enforcement at a designated port by the importer/exporter or his/her agent before importation or exportation.

The document package presented to the Service must contain the following: (1) All shipping documents (including bills of lading, waybills and packing lists or invoices); (2) all permits or other documents required by the laws or regulations of the United States; and (3) upon importation, all permits or other documents required by the laws or regulations of any foreign country.

The Service conducts two types of import/export inspections. One is the examination of documents which accompany wildlife shipments, and the other is the examination of the wildlife itself. The purpose of a document inspection is to determine: (1) What wildlife by species and quantity is being imported or exported; (2) whether or not such importation or exportation is in accordance with applicable statutory and regulatory requirements, both U.S. and foreign; (3) the validity of any accompanying permits; and (4) whether or not a need to physically inspect the shipment is indicated.

The purpose of a physical inspection is to examine the wildlife itself to determine whether or not: (1) The species is that which was declared and documented, (2) the quantity of each species is that which was declared and documented, (3) there are species which were not declared or documented; and (4) the packages or containers in the shipment are properly marked.

Of course, wildlife is imported into or exported from the United States by various types of transportation and for various uses. In certain instances the type of transportation, category of wildlife or its intended use will require special inspection procedures. These special procedures are required for intransit shipments, international mail, accompanying personal baggage or household effects, live wildlife and perishable items (such as psittacine birds and primates), containerized cargo, and hunting trophies.

During 1982, 53,912 wildlife shipments (both commercial and noncommercial) containing 258,278,178 wildlife items were imported into or exported from the U.S. Of these, 14,443 shipments were physically inspected, resulting in the seizure of 1,457 shipments containing 1,058,334 items.

Historically, inspections of commercial wildlife imports and exports by the Service have for the most part been provided free of charge. For the first time, however, the Service proposed in its amended FY 1984 budget request to charge wildlife inspection fees to cover expenses incurred by the Service to conduct wildlife inspections. Even so, Congress appropriated $987,000 to fund inspection operations during FY 1984. Further, Congress stated in the Conference Report on H.R. 3363 (H. Rept. No. 98-399), making appropriations for the Department of the Interior for FY 1984, "The managers have no objection to the proposed user fees for port inspection activities as long as the funds are used to supplement available funds rather than as a substitute for appropriations."

Thus, any user fees collected from commercial wildlife importers and exporters would be utilized as a supplement to direct appropriations (included in the FY 1985 request), where they would enhance present operational funding levels for the existing contingent of 36 port inspectors under the current port alignment (i.e., fully fund all necessary costs of inspection operations, such as a salary, travel, support, etc., according to the optimum funding level per inspector, as described in the Special Agent Funding and Costs Report submitted to the Senate on May 17, 1983).

The inspection fee would only be charged to persons who are engaged in business as an importer or exporter of wildlife. This group accounts for almost all of the wildlife imported into or exported from the U.S. The term "engage in business as an importer or exporter of wildlife" is defined in 50 CFR 14.91(b) to mean a person who "devote(s) time, attention, labor, or effort to any activity for gain or profit that involves the importation or exportation of wildlife whether or not such person is an importer or exporter within the meaning of the customs laws of the United States." As a result, this action would be broad-based among those who engage in wildlife trade and would single out any particular group, such as retailers, fur dealers, etc.

Included among those who would be required to pay the inspection fee are those persons excepted from the license requirement by 50 CFR 14.92(b), but who still are engaged in business as an importer or exporter of wildlife. Whether or not an excepted person is engaged in business as an importer or exporter of wildlife must be determined on a shipment-by-shipment basis. Guidelines for making such a determination appear in the Service's Law Enforcement Memorandum #71 (Add. 1) dated January 8, 1981, on the subject "Import/Export Licenses, Clarification of 50 CFR 14.92."

As noted above, to monitor legal wildlife trade and interdict illegal importations and exportations of Federally protected fish and wildlife

species, the Service employs 36 uniformed Wildlife Inspectors at designated, border, and special ports of entry throughout the nation to perform wildlife inspections.

The average cost per wildlife inspector during FY 1984 is estimated at $28.00 for a total cost of $1,008,000. This figure includes compensation, travel and transportation, vehicle operation, supplies, equipment, training, and uniforms. This figure includes a *pro rata* share of clerical staff time, but does not include the costs of Special Agent supervisory time. The estimate for optimum funding per inspector during FY 1984 is even higher ($32,000), resulting in a total cost of $1,152,000.

The chart below summarizes the commercial wildlife import/export trade during the last three calendar years and shows the amount the Service would have raised each year through a $25 inspection fee.

	1980	1981	1982
Value	$672,555,014	$977,583,700	$748,585,947
Number of shipments	33,879	46,886	48,466
Amount raised by $25 inspection fee	$846,975	$1,339,650	$1,161,375
Total fee as a percentage of total value (line 2 divided by line 1)	.148	.137	.147

As the figures on the third line of the chart indicate, at least for 1981 and 1982, a $25 inspection fee raises approximately that amount required to fund the inspection program. While it is difficult to make projections about future years because of fluctuations in annual wildlife trade and the likelihood that the number of commercial wildlife shipments will decrease as shipments are consolidated to reduce the amount of fees paid, the Service still expects commercial shipments to remain near 1981–1982 levels based upon random samples of 1983 and 1984 wildlife trade data.

As the figures also indicate, depending upon the value of commercial wildlife trade and the number of shipments, the total inspection fee collected is likely to vary from approximately .13% to .15% of the total value of commercial wildlife imports and exports. Therefore, the inspection fee is not expected to have any significant effect on wildlife trade as a whole.

The Service looked at four options for imposing inspection fees that focused on charging wildlife import/export licensees as a group for the cost of inspecting commercial wildlife imports. These options were:

1. Establish a user fee (i.e., inspection fee) based on 2,400 licensees (the estimated number of licensees during FY 1984).

2. Establish a user fee based on the number of licensees whose total annual declared value of wildlife imports is above a specified minimum.

3. Establish a percentage fee based upon the declared value of a licensee's wildlife imports above a specified minimum.

4. Establish a user fee system that combines both fixed and percentage fees.

These options are discussed in greater detail in a document prepared as part of the administrative record on this proposal by the Service's Office of Endangered Species entitled "Preliminary Economic Analysis for Recovery of Fish and Wildlife Service Port Inspection Costs."

Each of these options was rejected because of inequity. The value of commercial shipments alone is not a reliable indicator of the number of times an exporter or importer uses inspection services. Value is, however, an accurate indicator of what group uses the services and that group is those people who are engaged in business as importers or exporters of wildlife, including those who not required to obtain a wildlife import/export license.

The Service's Division of Law Enforcement developed 2 sets of 1982 trade data. One was an alphabetical listing of all commercial wildlife importers with a declared value of commercial wildlife imports (DVCWI) greater than $8,000. The other was a listing of all commercial wildlife importers ranked by their DVCWI's and subtotaled at specific increments. For all importers, there were 12,639 entries accounting for a total DVCWI of $482.714 million. For importers of over $8,000 DVCWI, there were 5,900 entries accounting for a DVCWI of $482.121 million, or about 98 percent of the total DVCWI. In the original data, importers were listed only by name. Consequently, due to the precise manner in which the names were listed, a single importer may appear several times in the data with slight variations in the name.

The original data were refined by aggregating in repetitive importer DVCWI listings above $8,000 that would aggregate to a DVCWI of $.25 million or greater. For instance, to arrive at the 316 individual commercial importers of $.25 million or above, 2,048 entries were aggregated. At this level, over 73 percent of the total commercial imports had been accounted for. Over 10,000 entries remained to be aggregated to determine the individual commercial importers at lower levels (referred to later as unaggregated entries). The aggregated listings were then totaled and categorized by $.25 million increments from $.25 million to $1.00 million, $1.00 million to $2.00 million and above $2.00 million in DVCWI. These data are summarized in Appendix A attached to this proposal. As the table shows, 316 importers accounted for slightly over 73% of the total DVCWI during 1982, with each importer's DVCWI greater than $.25 million. Another 2,084 importers, accounting for much of the remaining 25% (over 24%) of the total DVCWI, had DVCWI's between $.025 and $.25 million.

A review of the 1982 wildlife trade data also suggests that the inspection fee will not have a disproportionate impact on any one commercial importer or exporter. The largest number of commercial wildlife shipments imported during 1982 by any licensee was 380 wildlife shipments valued at approximately $23 million. The second largest was 187 wildlife shipments valued at over $6 million. However, both the median and mean in terms of number and value are substantially lower. If an inspection fee is charged for each commercial shipment, however, shippers are likely to consolidate shipments, thereby reducing the total number.

A review of the unaggregated entries of individual commercial importers revealed that only 36 importers whose DVCWI was above $8,000 imported commercial shipments that had an average value per shipment of less than $1,000. The lowest average declared value per shipment was $400. In this extreme case the inspection fee would amount to only slightly more than 6% of the average value of each shipment.

The unaggregated entries for commercial importers with total DVCWI's below $8,000 appears to be too unreliable to reach any conclusions about the effect of user fees on their activities. For a few importers, however, the inspection fee is likely to be much higher than 6%. In a number of instances, no value was declared by the importer even though the wildlife was imported for commercial purposes. In other instances, it appears as though the importer assigned a nominal value to the shipment.

The requirement for persons engaged in business as importers or exporters of wildlife to pay inspection fees would be enforced through section 9(d) of the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1538(d), which makes it unlawful "for any person to engage in business as an importer or exporter of

fish or wildlife * * * without having first obtained permission from the Secretary [of the Interior]." Payment of inspection fees would be enforced as a condition of either the wildlife import/export license (for licensees) or as a condition of maintaining an exception to the license requirement (for excepted persons). In either case failure to pay any required inspection fees would subject the violator to possible criminal or civil penalties under the ESA.

Inspection fees for wildlife imports would be collected at the time and place where clearance is requested. No wildlife would be cleared unless the inspection fee is paid and clearance would be refused for nonpayment. Once wildlife is presented for clearance, the fee would not be refundable, even if clearance is not obtained. Inspection fees for wildlife exports would have to be paid when the wildlife export declaration is filed.

Paperwork Reduction Act

This proposal does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Primary Author

The primary author of this proposed rule is John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C.

Determinations of Effects of Rules

The Department of the Interior has determined that this is not a major rule under Executive Order 12291. The Department has also certified that the rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The increase in the fee for a wildlife import/export license from $50 to $250 (the license is valid for 2 years) should have an inconsequential effect. During any calendar year period, a person may engage in business as an importer or exporter of wildlife and import or export wildlife with a declared value of up to $25,000 without a license. Therefore, the most (a "worst case" result) any licensee would pay for the license is 1% of the total value of commercial wildlife imports and exports. Even this extreme case only occurs if the amount of wildlife imports or exported during one calendar year slightly exceeds $25,000 (requiring the importer/exporter to obtain a license) and no wildlife is imported or exported during the next year. For most licensees, the fee actually would be a much lower percentage of the total value of commercial imports and exports during the calendar year.

The total amount collected by the new inspection fee would be likely to vary from approximately .13% to .15% of the total value of commercial wildlife imports and exports. Individual importers and exporters whose wildlife imports and exports exceed $5,000 a year would find in extreme cases that the inspection fee amounts to as much as 6% of the average value of each shipment.

These determination are discussed in more detail in a Determinations of Effects which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Division of Law Enforcement, 1375 K Street, NW., Suite 300, Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." Comments on the draft environmental assessment should be mailed or delivered to the address given at the beginning of this proposal during the comment period on the proposed rule.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, *Code of Federal Regulations* is proposed to be amended as follows:

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 is revised to read as follows:

Authority: 16 U.S.C. 42; sec. 4, Pub. L. 97–79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97–79, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1202), Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States; sec. 9(d), Pub. L. 93–205, 87 Stat. 883 (16 U.S.C. 1538(d)); sec. 6(a)(1), Pub. L. 96–159, 93 Stat. 1223 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; sec. 10, Pub. L. 93–205, 87 Stat. 898, as amended by secs. 2 and 3, Pub. L. 94–359, 90 Stat. 3760, sec. 7, Pub. L. 96–159, 93 Stat. 1230 (16 U.S.C. 1539); secs. 11(b)(2) and (f), Pub. L. 93–205, 87 Stat. 897, as amended by sec. 9(4), Pub. L. 96–632, 93 Stat. 3781 (16 U.S.C. 1540(b)(2) and (f)); sec. 13(d), 88 Stat. 908, amending 46 Stat. 680 (19 U.S.C. 1431–1); title I, sec. 112, Pub. L. 96–422, 94 Stat. 1042, as amended by Title II, sec. 201(e), Pub. L. 96–470, 94 Stat. 2241 (16 U.S.C. 1382); Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701).

§ 13.11 [Amended]

2. Amend § 13.11, paragraph (d)(4) by removing the amount of "$50" under the fee for the import/export license (§ 14.93) and inserting in its place the amount of "$250."

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 is revised to read as follows:

Authority: 18 U.S.C. 42; secs. 5 and 6, Pub. L. 97–79, 95 Stat. 1077 and 1078 (16 U.S.C. 3375 and 3376); secs. 9(d)–(f) and 11(f), Pub. L. 93–205, 87 Stat. 884, 886, and 900 (16 U.S.C. 1538(d)–(f), 1540(f)); sec. 112, Pub. L. 96–322, 94 Stat. 1042 (16 U.S.C. 1382); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 703); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Pub. L. 97–1581, 96 Stat. 1051 (31 U.S.C. 9701).

§ 14.52 [Amended]

2. Amend § 14.52, paragraph (c)(3) by removing the word "and."

3. Amend § 14.52, paragraph (c)(4) by removing the period and adding the word "and" preceded by a semicolon.

4. Amend § 14.52 by adding paragraph (c)(5) to read as follows:

§ 14.52 Clearance of imported wildlife.

* * * * *

(c) * * *

(5) If the importer is engaged in business as an importer or exporter wildlife as defined by § 14.91(b), an inspection fee of $25.00 in the form of a certified check or money order payable to the "Fish and Wildlife Service." The inspection fee is not refundable if clearance is not obtained.

§ 14.53 [Amended]

5. Amend § 14.53, paragraph (c) by removing the word "or."

6. Amend § 14.53, paragraph (d) by removing the period and adding the word "or" preceded by a semicolon.

7. Amend § 14.53 by adding paragraph (e) to read as follows:

§ 14.53 Refusal of clearance.

* * * * *

(e) The inspection fee required by § 14.52(c)(5) has not been paid.

8. Amend § 14.63 by adding a sentence at the end of that section to read as follows:

§ 14.63 Export declaration requirements.

* * * If the exporter is engaged in business as an importer or exporter of wildlife as defined by § 14.91(b), an inspection fee of $25.00, in the form of a certified check or money order payable to the "Fish and Wildlife Service," must accompany the filing of the Form 3–177.

§ 14.92 [Amended]

9. Amend § 14.92, paragraph (b) by removing the word "and" after the phrase "records required above" and before the phrase "an opportunity to copy such records."

10. Amend § 14.92 paragraph (b) by adding the phrase "and pay all fees required by §§ 14.52(c)(5) and 14.63" preceded by a comma after the phrase "an opportunity to copy such records."

11. Amend § 14.93 by adding paragraph (d)(7) to read as follows:

§ 14.93 License application procedure, conditions, and duration.

* * * * *

(d) * * *

(7) Licensees shall pay all fees required by §§ 14.52(c)(5) and 14.63.

* * * * *

Dated: April 17, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Appendix A

NUMBER OF IMPORTERS AND DVCWI [1], BY CATEGORY, 1982

Value category (million dollars)	Importers [2]	Percent of total [3]	Total of all categories [4]		DVCWI [1] (million dollars)	Percent of total DVCWI	Total [5] DVCWI (Percent)
			Number of importers	Percent			
Above 2.0	38	1.40	38	1.40	[illegible]	37.42	37.42
1.0 to 2.0	40	1.67	78	3.13	98,889	13.32	49.74
0.75 to 1.0	38	1.38	113	4.71	34,672	7.37	57.11
0.50 to 0.75	69	2.33	180	7.04	35,418	7.38	64.34
0.25 to 0.50	147	6.12	319	13.16	58,887	11.36	75.70
Totals:							
>.25	318	13.16			348,876	75.70	
<.25					112,389	24.30	
0.000 to 0.25	2,264	86.92					
Total	[6] 2,469	100.00			[6] 468,214	100.00	

[1] Declared value of commercial wildlife imports.

[2] Assumes a total of 2,469 importers with license above 000,000 DVCWI. The number of importers would require the aggregation of all import data, and is presently unavailable.

[3] A combination of the value in the category and the preceding higher-valued categories.

[4] Total 1982 DVCWI for all importers 43.0 > 50.00 million DVCWI.

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TESTIMONY

OF

F. HENRY HABICHT, II
ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE

SENATE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

ON

LACEY ACT ENFORCEMENT

JUNE 26, 1984

37-367 O - 84 - 6

Good morning. I am Hank Habicht, Assistant Attorney General in the Land and Natural Resources Division of the Department of Justice. Our Division is responsible for litigation, brought both by and against the government, in the areas of wildlife and fisheries, as well as many other facets of the environment. Thus, we are called upon to represent the Department of the Interior and the National Oceanic and Atmospheric Administration and numerous other agencies when their decisions are the subject of judicial challenge, and we also serve as prosecutors when they refer to us cases alleging violations of the various federal statutes which touch this area: the Endangered Species Act, Marine Mammal Protection Act, Magnuson Fishery Conservation and Management Act, Airborne Hunting Act, Wild and Free Roaming Horses and Burros Act and roughly 20 others. Among our wildlife enforcement authorities, no statute has proved so effective in combatting illegal harvest, trade and importation as the Lacey Act, especially as a result of the strengthening Amendments of 1981. In the area of international enforcement, we are committed to work with our client agencies, Customs and Fish and Wildlife Service to develop the law to enhance deterrence and to find improved means of dealing with the many foreign law issues involved in these matters.

The statistics show that our Division and the United States Attorneys' Offices have obtained 271 criminal convictions in Fiscal 1983 and 221 in Fiscal 1982, compared to 95 and 136, respectively, in Fiscal 1980 and 1981. Overall, we filed 791 Lacey Act cases in Fiscal Year 1982 and 543 in Fiscal Year 1983,

compared to 876 and 925 in Fiscal 1980 and 1981, respectively. While there have been fewer prosecutions initiated, the trend is clearly toward more major and complex investigations by Customs and Fish and Wildlife Service, resulting in prosecutions with more significant results in penalties and forfeitures.

The 1981 Amendments provided us with new and enhanced enforcement tools to combat this traffic -- strict liability forfeitures and increased civil and criminal penalties. On the international trade front, we have been aggressive to take advantage of these tools to make important cases. In two high-visibility cases, the Fish and Wildlife Service seized shipments of exotic black palm cockatoos, and we instituted forfeiture actions. The shipments of these birds, worth $5,000 to $10,000 or more on the American market, arrived in Los Angeles and Miami in late September. The Los Angeles birds carried papers declaring them to have been captive-bred in the Philippines, and we received expert advice that they have never been successfully captive-bred, at least in these commercial numbers. That case is pending as there is voluminous discovery still to be concluded. The Miami birds carried papers indicating that they came from Indonesia and were reexported through Malaysia and Singapore, but we were able to make a convincing proffer at a pretrial hearing that the law of Indonesia (as well as the law of Australia and New Guinea, the only other places they exist in the wild) prohibits their export for commercial purposes. The importers thereafter consented to forfeiture of this shipment, worth from $500,000 to $1,000,000 in the United States market, and also confessed

civil penalty liability. We are presently fighting another round with these importers, who apparently have another 85 birds now in Singapore which they wish to bring here to market. On June 14, 1984, they filed an application for temporary restraining order and declaratory judgment that the Lacey Act is unconstitutional insofar as it bars importation of wildlife for which they have ostensibly valid CITES reexport permits from Malaysia. In sum, their theory is that if wildlife can be removed from its country of origin, albeit in violation of that nation's law, and if a reexport permit can be gotten from a third country -- by whatever means -- we cannot bar its importation under the Lacey Act. This, of course, strikes at the core of the 1981 Amendments and would fly in the face of CITES recognition that party nations can make more stringent domestic law. We are resisting this argument vigorously, and on June 18 we defeated the TRO application in district court in Miami. Anna Marie's, Inc. v. U.S. Fish and Wildlife Service, et al. (No. 84-6540-Civ-ALH, S.D. Fla.).

Obviously, this is an instructive example of the traffic spurred by enormously high profit margins. On the earlier shipment we discovered that the importers had paid between $600 and $700 per bird in Indonesia, with the expectation of selling them here for between 10 and 15 times that much. The traffickers are sophisticated, and working with our client agencies, we at Justice are working to develop the law and the capacity to deal with some of the difficult foreign law issues presented.

We have also recently reached successful conclusion of a forfeiture action against another shipment of triton cockatoos

which, similarly, were exported from Indonesia. United States v. 20 Triton Cockatoos (No. 84-0145, D. Hawaii).

Another very recent successful case is United States v. Klapisch, (D. N.J.). On May 31, 1984, a jury convicted all three defendants of 13 counts of violation of the Endangered Species Act and one conspiracy count in connection with shipments of hides of black caiman (an endangered South American crocodile) during a three year period from 1977 to 1979. Defendants directed traffic in these hides from Bolivia to Europe and Hong Kong. The two individual defendants face a maximum penalty of 14 years imprisonment and a $280,000 fine. The corporation faces a maximum $280,000 fine. Sentencing is scheduled for July 9.

The most important legal development in the area of international wildlife trade in 1983 came in United States v. Slocum, 708 F.2d 587 (11th Cir. 1983), which was a case begun in 1979 under the customs and conspiracy laws rather than the Lacey Act. There, the importer and his family and employees hid exotic birds which died of Newcastle's Disease while in the quarantine station he operated. The court of appeals said the jury was entitled to find from the evidence that there was a definite policy of such concealment and that each of the four co-conspirators took active steps in furtherance of the objective. Also, the court announced important law in reversing the dismissal of certain counts of the indictments which were predicated upon evidence suppressed as the product of an unlawful search. In the course of a search pursuant to warrant directed to paperwork

for importation of certain kinds of birds, the agents came upon documents relating to a fraudulent double invoicing scheme designed to avoid customs duties. Calling the matter one of first impression, the Eleventh Circuit held that the plain view exception was applicable because the agents were engaged in a proper perusal of documents which might have been within the scope of the warrant, the discovery of the evidence was inadvertent and incriminating on its face. We will now be able to try the main defendant on these counts as well if he defaults on his obligations: he has been sentenced to a substantial jail term, and has agreed to repay $293,000 for which he had falsely claimed indemnity from the Department of Agriculture after his birds had died.

To be sure, we have had setbacks recently as well. In United States v. McDonald (No. 83-345 CR, S.D. Fla.), we had indicted two figures in what we believed was the tip of a large scheme to import great numbers of birds with falsified documents from Guatemala and elsewhere in Latin America. On February 29, 1984 the district court granted defendants' motion to suppress confessions made to federal agents who interrogated them (at the U.S. Consulate) while they were incarcerated in Guatemala. The court held that the circumstances were inherently coercive. While we believe that the statements were perfectly voluntary and that the court erred in its too-sympathetic view of their situation, the decision was rooted in the court's findings of fact that appellate courts are loathe to review, and so we declined to appeal.

The international trade felony cases are not easy ones to make, as proof of the knowledge of the underlying foreign law of the exporting country is often quite problematic. The importer is often shielded by brokers and other middlemen, and he thus can argue that he did not know of any irregularity. He may also often point to ostensibly valid re-export documents from countries through which the wildlife passed on its way to the United States; he may not implausibly contend that he did not know that the wildlife was taken out of the country of origin by means of bribery or smuggling. All of these considerations argue for a prudent selection of cases to prosecute, in order to avoid making bad law and wasting scarce resources.

Nor are Lacey Act forfeiture proceedings an automatically successful device for putting a stop to the wildlife market, even though they afford a strict liability theory of relief. A frustrating example is United States v. 707 Birds (C.D. Cal. 1982). There, we were quite confident that the birds' Paraguayan export permits were false, as they were signed by an unauthorized person and those species are not native to Paraguay. We seized the birds and instituted a forfeiture action. We were subsequently unable to obtain in time required affidavits from Paraguayan officials regarding Paraguayan law, and our motion for partial summary judgment was defeated. In the end, we were constrained to settle the case for a relatively modest amount. The point is that the proof of the foreign law itself may be elusive. Pursuant to the Federal Rules of Civil Procedure, the standards for proving foreign law are very largely within the discretion of

the district judge. We must continue to work in developing a structure for obtaining the fullest cooperation of the government of the exporting country. Otherwise we cannot be confident that we can make a sufficient showing to carry our burden of proof.

In United States v. 38 Birds (E.D. N.Y. 1983), we also pursued the forfeiture avenue against birds which arrived with no permits at all, and would have confiscated the entire shipment save for the fact that arrangements could not be made for the care of more than the 38 birds.

Fortunately, in our recent cases, we have had very good cooperation from Indonesia as well as Australia and New Guinea. If we can receive enhanced cooperation from some of the South American and Asian countries we will be able to make more cases, more solidly. We hope in this regard to follow through on some of the Attorney General's efforts to promote more effective mutual assistance relationships among nations in law enforcement generally.

We can be cautiously optimistic for the future, as our delegation to the 1983 Convention on International Trade in Endangered Species in Botswana secured passage of a recommendation to the parties to ensure that the Secretariat be supplied not only with notices of changes in countries' wildlife laws, but with the full text, the official citations and the government officials responsible. Should this regimen be followed, we can anticipate more seizures and forfeiture actions since we will have more assurance of probable cause.

Moreover, I am especially pleased to announce today that the Department of Justice will support an important project proposed by the World Wildlife Fund to compile a bank of reliable and current information about the wildlife trade laws of the principal exporting countries. The output will be expert summaries of the Latin American, Caribbean, African, Asian and Oceanian countries' laws, as well as rosters of responsible officials so that any small points of controversy or interpretation may be resolved. This will be an invaluable addition to our bank of knowledge and legal resources. By permitting our agents and prosecutors to make necessary determinations and proof of violations more easily, we believe such a project will greatly advance the cause of wildlife protection.

In addition, we are working with Interior on the idea of notices in the Federal Register which would answer in advance our intention to seize or reject shipments in "problem" categories that are presumptively illegal (e.g. cockatoos from Indonesia). This way, importers could have certainty and would not risk loss of investment. We must be careful in formulating this blacklist scheme, however, as we do not want to have estoppel worked against us by importers of other illegal, items, albeit "unlisted." Industry must have the responsibility for ascertaining and complying with the laws of exporting countries.

One more improvement-oriented subject on which we are consulting with Interior is a policy regarding refusal of shipments considered to be ilegal, with a requirement that they be returned to country-of-origin. The latter may be necessary to

prevent rejected importers from marketing the illegal cargo elsewhere in the world or, indeed, from trying again at another of our own ports. This might be an important aid to our enforcement program, but it has potentially troublesome ramifications (such as reshipment mortalities for live wildlife and disposition on re-arrival) which needs thorough consideration.

The Lacey Act is also an important tool in domestic enforcement to control interstate shipments in wildlife and wildlife products. Strict liability forfeitures and increased civil and criminal penalties provided by the Amendments have greatly enhanced our ability to control this domestic traffic too. In the first post-1981 Amendments case, United States v. Murphy and L'Heureux (D. Me. 1982), we prosecuted defendants who took tainted clams from closed areas in Boston Harbor and transported them to Maine for sale. In the second case, United States v. Munden (N.D. Tex. 1982), we prosecuted a group which was engaged in the illegal harvest of Texas game fish for distribution in Louisiana and Oklahoma. The first felony indictments were returned in cases arising out of an undercover investigation of the traffic in fox pelts in North Carolina, Tennessee, and Kentucky, United States v. Bryant, et al. (E.D. Tenn. 1981). Posing as fur buyers, Fish and Wildlife agents met with Bryant and his confederates, who expressed interest in purchasing untagged grey and red fox pelts which they knew to be illegal in North Carolina. Defendants subsequently made purchases from the undercover agents, as well as from other sellers who pleaded guilty and testified for the government. Defendants urged that

their conduct was mere transshipment under 16 U.S.C. 3377(a), because they intended to take the furs to a state in which they might be legally possessed. They also argued that the Amendments were unconstitutionally vague and that they were entrapped. The district court rejected each of these three defense theories, and the court of appeals has recently affirmed in the first important appellate treatment of the 1981 Amendments, United States v. Bryant, ___ F.2d ___ (6th Cir. September 2, 1983).

Another significant series of prosecutions was begun in seven judicial districts in the midwest states in late 1982. This involved a similar undercover investigation of a large black market scheme for trout and other fish taken illegally in the Great Lakes. Some 25 convictions of corporations and individuals have since been obtained, and more cases are still pending. Most recently, we also obtained Lacey Act felony convictions against defendants implicated in large-volume operations in illegally caught catfish from Oklahoma lakes, United States v. Bridgeman, et al. (E.D. Ok. August 12, 1983).

There have been several prosecutions of participants in interstate commercial transactions in game animals. In 1982 in the Southern District of Alabama we obtained a 15-year sentence against a defendant who traded in deer meat, drugs and alcohol, and who assaulted Fish and Wildlife Service agents who tried to apprehend him. In United States v. Brown, et al. (W.D. Ky. October 19, 1983), we obtained guilty pleas from 13 misdemeanor defendants charged with the unlawful taking and sale of sizeable quantitites of wildlife, primarily mature deer but including fawns and rabbits.

Other recent cases have focused on airborne hunting rings -- defendants organized to provide "full service" hunting trips in which the client-hunter gets the aircraft, weapons and taxidermy in the same package. In United States v. Short, et al. (W.D. Tex. 1983), we obtained convictions and stringent sentences of the principal in such an enterprise. The pilot was sentenced to one and one-half years' imprisonment, fined $20,000 and his pilot's license was revoked. The "travel agent" and gun dealer was sentenced to a year in jail and a $10,000 fine, and his license to deal in firearms was revoked. These convictions were in the main affirmed in a Fifth Circuit decision handed down on June 14, 1984. The appellate court did, however, reverse the substantive Lacey Act count against the pilot on a theory we believe to be infirm. It rejected as insufficient proof of the felony value our evidence that the pilot had received $850 from hunters who shot mule deer, barbado sheep, javelina and an eagle. Its grounds were that $600 of that sum was paid by the person who shot the barbado sheep (an animal said not to be wildlife under Texas law), thereby leaving only $250 -- less than the $350 floor in the Act. Moreover, the court held that we should have shown the market value of the deer, javelina and eagle. We believe that the 1981 House and Senate Reports clearly establish that the proper value standard is how much is paid to the guide for an illegal hunting trip. We also do not believe that state law wildlife definitions should control, and we are considering a petition for rehearing.

In United States v. Leonard, et al. (D. Colo. 1983), a poaching ring which offered guides for hunts for bighorn sheep in Montana was broken. The guides had guaranteed a wealthy client a record bighorn sheep for a $7,500 fee. Six members of the ring have pleaded guilty; some are serving time and all have been fined.

In United States v. Venancio, et al. (D.R.I. 1983), convictions were obtained in cases made by the National Marine Fisheries Service against defendants who took shellfish from contaminated areas in Rhode Island and transported them for distribution in New York. More than a hundred people were forced to the hospital by the consumption of those shellfish. The case dramatically emphasized the importance of the Lacey Act penalties against interstate transportation of seafood items from state-closed areas in order to protect the public health.

The biggest and most highly publicized prosecutions under the Lacey Act in National Marine Fisheries Service cases are United States v. Sohappy, et al. (W.D. Wash. 1983), which were the product of an extensive undercover operation. There, we obtained the convictions of 16 of 18 Columbia River Indian defendants charged with illegal black market traffic in salmon. There was much pretrial publicity, and the court ordered the trial moved to Los Angeles, where prosecutors wore bulletproof vests and stayed in secure accommodations because of death threats made against them. The court rejected defendants' argument that their tribes' treaties entitled them to catch unlimited numbers of fish without reporting in accordance with the laws of the

State of Washington. All but three defendants were sentenced to periods of incarceration up to five years. We have just filed our appellees' brief in the Ninth Circuit, where defendants are attempting to get reversals mainly on the basis of their supposed treaty right to unregulated harvest.

We believe that notwithstanding certain difficulties we have experienced to date, the Lacey Act Amendments provide a very useful and satisfactory framework for the enforcement effort against illicit wildlife trade. We do not think that additional changes to the law are necessary. Of course, it must be recognized that because of resource demands on the Customs and Fish and Wildlife Service, agents cannot inspect all of the wildlife products which arrive in our ports, and must select for investigation only some of those cases which suggest illicit international commerce. Selecting cases to develop the contours of these new laws and send the deterrent message widely must be an important component of agency efforts in this area. We at the Justice Department stand committed to pursue in the most vigorous fashion every case which the agencies elect to develop, and to assist in developing a program which uses the Lacey Act and related laws to provide maximum deterrence. We recognize, at the same time, that this trade will continue as long as the incredibly high profits are attainable. But we are confident that with our vigorous efforts, supported by the strong laws that we have available, we will be successful in making the risks of participation in this illegal trade outweigh what is to be gained from it.

STATEMENT OF MR. WILLIAM R. LOGAN
DIRECTOR, OFFICE OF INVESTIGATIONS
U.S. CUSTOMS SERVICE
BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

MR. CHAIRMAN, AND MEMBERS OF THIS COMMITTEE, I WOULD LIKE TO THANK YOU FOR INVITING ME TO TESTIFY TODAY ON THE ROLE OF THE U.S. CUSTOMS SERVICE IN ENFORCING THE PROVISIONS OF THE LACEY ACT.

THE CUSTOMS SERVICE HAS BEEN RESPONSIBLE FOR ENFORCING OR ASSISTING IN THE ENFORCEMENT OF THE FISH AND WILDLIFE IMPORT AND EXPORT LAWS SINCE PASSAGE OF THE LACEY ACT AT THE TURN OF THE CENTURY. IN THE LATE 1970'S, AS A RESULT OF THE INCREASED TRADE IN THE ILLEGAL TRAFFICKING OF WILDLIFE, CUSTOMS DESIGNATED ENFORCEMENT OF THE WILDLIFE LAWS AS A HIGH PRIORITY NATIONAL PROGRAM. THIS RESULTED IN A SIGNIFICANT EXPANSION OF THE ENFORCEMENT EFFORTS EXPENDED BY U.S. CUSTOMS OFFICERS IN BOTH THE UNITED STATES AND OUR OVERSEAS OFFICES.

THESE EFFORTS RESULTED IN INCREASED SEIZURES OF SMUGGLED WILDLIFE, ESPECIALLY OF PSITTACINE BIRDS, FROM VARIOUS PARTS OF THE WORLD, BUT PRIMARILY FROM SOUTH AND CENTRAL AMERICA AND ASIA. THIS WILDLIFE WAS GENERALLY SOLD THROUGH LOCAL MIDDLEMEN IN THE COUNTRIES OF ORIGIN TO BROKERS AND DEALERS WHO WOULD THEN

RESELL TO "IMPORTERS" TO SMUGGLE INTO THE UNITED STATES, EUROPE AND JAPAN. THE MARK-UPS INVOLVED IN THE TRADE WERE ASTRONOMICAL, AND AS A RESULT IMPORTERS COULD AFFORD TO TAKE CHANCES, AND COULD EASILY OVERCOME THE DEATHS OF LARGE PERCENTAGES OF THEIR SHIPMENTS. IN SOME CASES, ESPECIALLY THOSE INVOLVING BIRDS FROM MEXICO, THE IMPORTERS WOULD CRAM THE BIRDS INTO SMALL CONTAINERS, SUITCASES, AUTOMOBILE TRUNKS, AND EVEN UNDER THE HOODS OF VEHICLES. BIRDS WERE DRUGGED OR GIVEN ALCOHOLIC BEVERAGES TO KEEP THEM QUIET, AND THESE DRUGS, ALONG WITH THE LACK OF AVAILABLE OXYGEN AND THE PRESENCE OF EXOTIC DISEASES, COULD RESULT IN THE DEATHS OF MORE THAN 75 PERCENT OF THE SHIPMENT, BUT STILL RESULT IN A PROFIT FOR THE TRAFFICKERS.

AS TRAGIC AS THE INHUMANE TREATMENT ACCORDED THE BIRDS AND OTHER WILDLIFE BY THE SMUGGLERS, WAS THEIR TOTAL DISREGARD FOR THE FACT THAT THEY WERE DESTROYING NOT ONLY INDIVIDUAL CREATURES, BUT ALSO COMPLETE SPECIES. THE SMUGGLER WAS NOT ONLY BREAKING THE LAW, BUT WAS ALSO BRINGING MANY SPECIES CLOSER TO EXTINCTION.

IN ADDITION TO THE SMUGGLING PROBLEM WE WERE CONFRONTED WITH THE FACT THAT MANY OF THE BIRDS WERE DISEASED AND COULD (AND DID) INFECT DOMESTIC POULTRY AND OTHER FOWL, RESULTING IN LARGE NUMBERS OF POULTRY HAVING TO BE DESTROYED. THIS PROBLEM WAS EXACERBATED BY THE PRACTICE OF SOME SMUGGLERS WHO WOULD BREAK INTO QUARANTINE STATIONS AND SUBSTITUTE BIRDS SO THAT RARE EXPENSIVE BIRDS IN QUARANTINE -- WHICH COULD CARRY DANGEROUS

CONTAGIOUS DISEASES -- WERE REPLACED BY LESS EXPENSIVE AND THEREFORE LESS PROFITABLE SPECIES.

IN 1971, 12 MILLION FOWL WERE DESTROYED BECAUSE OF EXPOSURE TO EXOTIC NEWCASTLE DISEASE, AND IN 1979, 14,000 PET BIRDS WERE DESTROYED FOR THE SAME REASON. THESE ACTIONS COST THE U.S. TAX PAYERS MILLIONS OF DOLLARS.

ONE CASE IN THE MID-1970'S IS A GOOD EXAMPLE OF THE ATTITUDE OF THESE WILDLIFE TRAFFICKERS TOWARDS THE COMMODITIES IN WHICH THEY TRADE. THE CASE INVOLVED THE SMUGGLING AND ')ULENT IMPORTATION OF REPTILES FROM THE AUSTRALIAN AND . AREAS INTO THE UNITED STATES.

THE INVESTIGATION INVOLVED EVIDENCE GATHERING BY OUR SPECIAL AGENTS IN AUSTRALIA, FIJI, PAPUA NEW GUINEA, THAILAND, SINGAPORE AND HONG KONG. THEY INTERVIEWED THE NATIVE POACHERS WHO TRAPPED THE ANIMALS, LOCAL GOVERNMENT OFFICIALS, AND SOME OF THE "KINGPINS" OF THE ILLEGAL ANIMAL TRADE IN SOUTHEAST ASIA. THIS INVESTIGATION RESULTED IN THE CONVICTIONS OF 31 SUBJECTS FOR MULTIPLE VIOLATIONS, AND THE IDENTIFICATION OF DOZENS OF OTHER PERSONS (INCLUDING SEVERAL ZOO OFFICIALS) WHO WERE INVOLVED IN THE ILLICIT REPTILE AND AMPHIBIAN TRAFFIC. MANY OF THE REPTILES WERE SO RARE THAT AMERICAN EXPERTS HAD NEVER SEEN LIVE SPECIMENS. HOWEVER, REGARDLESS OF THE VALUE AND RARITY OF THE REPTILES, THE SMUGGLERS, WHEN THEY BECAME AWARE OF THE INVESTIGATION, BURIED

THE SPECIMENS ALIVE IN A NEW JERSEY MARSH IN AN ATTEMPT TO DESTROY OR CONCEAL THE EVIDENCE. CUSTOMS AGENTS WERE LATER ABLE TO DIG UP THE FROZEN REMAINS AND PRESERVE THEM FOR TRIAL.

THE SCOPE OF U.S. CUSTOMS' ACTIVITIES IN THE LATE 1970'S CAN BE DEMONSTRATED BY THE FACT THAT A 6-MONTH SURVEY OF INVESTIGATIVE CASES FROM OCTOBER 1, 1979, TO MARCH 31, 1980, REVEALED THAT WE WERE INVOLVED IN OVER 175 INVESTIGATIONS, AND THAT DURING THE 6-MONTH PERIOD, CUSTOMS CASES HAD RESULTED IN OVER 51 SIGNIFICANT SEIZURES AND 45 CONVICTIONS FOR VIOLATIONS OF THE WILDLIFE LAWS.

DURING THIS PERIOD OUR OVERSEAS OFFICES, WERE EXTREMELY INVOLVED IN BOTH INVESTIGATION OF WILDLIFE TRAFFICKING AND IN ATTEMPTING TO CONVINCE THE AUTHORITIES OF THE INVOLVED COUNTRIES THAT THEY SHOULD TIGHTEN UP THEIR LAWS AND INCREASE THEIR ENFORCEMENT EFFORTS. OUR SUCCESSES IN THIS AREA WERE EXTREMELY REWARDING. COUNTRIES SUCH AS AUSTRALIA, WHICH ALREADY HAD A VIGOROUS LAW ENFORCEMENT EFFORT TO PREVENT EXPORTS OF THEIR ENDANGERED AND THREATENED SPECIES, PROVIDED OUR OFFICERS WITH MAXIMUM COOPERATION, AND OTHER COUNTRIES, SUCH AS THAILAND, MADE MAJOR CHANGES IN THEIR LEGISLATION TO ATTEMPT TO STIFLE THE ILLEGAL TRADE IN AND THROUGH THEIR COUNTRIES.

THIS PERIOD OF TIME WAS DEFINITELY THE PEAK OF CUSTOMS ENFORCEMENT ACTIVITIES PERTAINING TO ILLEGAL TRAFFICKING IN

WILDLIFE. HOWEVER, ALTHOUGH THE SCOPE OF OUR EFFORTS HAS BEEN REDUCED IN THE PAST 3 YEARS AS A RESULT OF OUR NECESSARY INVOLVEMENT IN OTHER PROGRAMS OF NATIONAL IMPORTANCE, WE ARE AWARE THAT THE PROBLEM OF SMUGGLING OF WILDLIFE STILL EXISTS, AND WE CONTINUE TO PURSUE LACEY ACT INVESTIGATIONS WHEREVER WE FIND VIOLATIONS.

BUDGETARY CONSTRAINTS, MORE SUCCESSFUL ENFORCEMENT OF LAWS BY OUR FOREIGN COUNTERPARTS, AND INCREASED INVOLVEMENT IN SUCH PROGRAMS AS NARCOTICS INTERDICTION, OPERATION EXODUS (WHICH INVOLVES THE INTERDICTION, SEIZURE AND INVESTIGATION OF DIVERSIONS OF STRATEGIC HIGH TECHNOLOGY MATERIALS AND EQUIPMENT INTENDED FOR SOVIET BLOC COUNTRIES), FINANCIAL INVESTIGATIONS PRIMARILY DIRECTED AGAINST THE LAUNDERING OF ILLICITLY OBTAINED FUNDS BY CRIMINAL ORGANIZATIONS, AND OUR COMMERCIAL FRAUD PROGRAMS INTENDED TO PROTECT OUR REVENUES AND ENFORCE OUR IMPORT LAWS, HAVE UNDOUBTEDLY HAD A MODIFYING EFFECT ON THE AMOUNT OF RESOURCES WHICH WE HAVE BEEN ABLE TO DEDICATE TO ENFORCEMENT OF THE WILDLIFE LAWS.

HOWEVER, WE ARE CURRENTLY INVOLVED IN WILDLIFE ENFORCEMENT ACTIVITIES ON BOTH A NATIONAL AND REGIONAL LEVEL.

IN ADDITION TO BEING ACTIVE IN THE WILDLIFE LAW ENFORCEMENT COORDINATING COMMITTEE WITH OTHER AGENCIES SUCH AS THE FISH AND WILDLIFE SERVICE, DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT

HEALTH INSPECTION SERVICE, DEPARTMENT OF JUSTICE, COUNCIL ON ENVIRONMENTAL QUALITY, AND DEPARTMENT OF COMMERCE, WE ARE ALSO INVOLVED IN CONDUCTING MAJOR WILDLIFE INVESTIGATIONS IN SEVERAL AREAS OF THE COUNTRY.

FOR EXAMPLE, DURING FISCAL YEARS 1983 AND 1984 TO DATE, IN SAN DIEGO, CALIFORNIA, ALONE WE HAVE CONDUCTED EIGHT IMPORTANT CASES INVOLVING THE SMUGGLING OF PSITTACINE BIRDS FROM MEXICO. THESE CASES HAVE SO FAR RESULTED IN THE RECOVERY OF APPROXIMATELY 600 BIRDS AND THE CONVICTION OF 13 DEFENDANTS. OF PARTICULAR INTEREST IS ONE CASE IN WHICH EVIDENCE HAS BEEN OBTAINED LINKING THE SMUGGLING VENTURE TO AN ORGANIZED CRIME OPERATION IN ARIZONA, WITH THE PROCEEDS OF THE PARROT SMUGGLING BEING USED FOR DRUG PURCHASES. DOCUMENTATION RECOVERED INDICATES THAT APPROXIMATELY 1,200 BIRDS HAVE BEEN ILLEGALLY IMPORTED AND SHIPPED TO CONSIGNEES THROUGHOUT THE UNITED STATES.

ANOTHER MAJOR INVESTIGATION WHICH INVOLVES ORGANIZED CRIME FIGURES IS CURRENTLY UNDERWAY IN THE NORTHEASTERN UNITED STATES. IN VIEW OF THE FACT THAT IT IS AN ONGOING INVESTIGATION I CANNOT PROVIDE YOU WITH THE NAMES OF THE PERSONS INVOLVED, BUT I WOULD LIKE TO GIVE YOU A BRIEF SYNOPSIS OF THE CASE.

THE MAJOR SUBJECT, HAS BEEN INVOLVED IN THE SMUGGLING OF ENDANGERED AND PROTECTED WILDLIFE, INCLUDING BIRDS AND REPTILES, FROM NUMEROUS COUNTRIES INCLUDING MEXICO, BOLIVIA, INDONESIA AND

AUSTRALIA SINCE 1970. DURING THIS PERIOD HE BECAME HEAVILY INVOLVED WITH ORGANIZED CRIME AND RACKETEERING ELEMENTS AND DRUG TRAFFICKING. HE USED THESE CONTACTS, NUMEROUS OTHER ASSOCIATES, AND A FOREIGN GOVERNMENT OFFICIAL TO ASSIST HIM IN HIS SMUGGLING ACTIVITIES, WHICH IT IS ESTIMATED WERE WORTH BETWEEN $2 AND 2½ MILLION.

IN 1982, THE SUBJECT WAS ARRESTED FOR NARCOTICS VIOLATIONS, FOUND GUILTY AND INCARCERATED. HOWEVER, HIS ORGANIZED CRIME ASSOCIATES HAVE ALLEGEDLY CONTINUED HIS SMUGGLING ENTERPRISES.

OF MAJOR INTEREST IN THIS CASE IS THAT FOR MUCH OF THIS TIME, HE WAS UNDER THE PROTECTION OF THE U.S. GOVERNMENT'S WITNESS PROTECTION PROGRAM, YET CONTINUED HIS ILLEGAL ACTIVITIES UNDER VARIOUS ASSUMED NAMES.

THIS INVESTIGATION IS CONTINUING, AND BECAUSE OF THE SCOPE OF THE SUBJECT'S ACTIVITIES AND HIS BACKGROUND, IT HAS BECOME OF SIGNIFICANT INTEREST.

ONE FACT WHICH GIVES ME PLEASURE IS THAT IN CONTRAST TO THE ACTIONS OF THE U.S. GOVERNMENT PRIOR TO 1980, WHEN SEIZED FOWL WERE USUALLY SUMMARILY DESTROYED, WE NOW DISPOSE OF OUR SEIZURES ACCORDING TO THE TERMS OF THE CURRENT MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF THE INTERIOR, AGRICULTURE, JUSTICE AND THE TREASURY. AS A RESULT, SEIZED BIRDS ARE NOW TURNED OVER TO THE DEPARTMENT OF AGRICULTURE FOR QUARANTINE PURPOSES. AFTER THE CASE IS ADJUDICATED, AND THE BIRDS ARE DETERMINED TO BE HEALTHY, THEY ARE SOLD AT AUCTION. THUS WE ENSURE THE SURVIVAL OF THE BIRDS, INCREASE THE PLEASURE OF THE AMERICAN PEOPLE WHO CAN VIEW OR OWN THE BIRDS, AND RECOUP SOME OF THE GOVERNMENT'S COSTS INCURRED IN INVESTIGATING AND PROSECUTING THESE CASES.

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THIS COMMITTEE, AGAIN I THANK YOU FOR THE PRIVILEGE OF APPEARING BEFORE YOU TODAY. IF YOU HAVE ANY QUESTIONS I WOULD BE PLEASED TO ANSWER THEM.

STATEMENT OF N. MARSHALL MEYERS
ON BEHALF OF THE
PET INDUSTRY JOINT ADVISORY COUNCIL

Mr. Chairman and members of the Subcommittee, my name is Marshall Meyers and I am appearing today as Counsel to the Pet Industry Joint Advisory Council (PIJAC). We are grateful for being provided an opportunity to testify during much needed oversite hearings examining the effectiveness of enforcement of the Lacey Act.

The Pet Industry Joint Advisory Council's membership consists of twenty-four associations and approximately one thousand individual and company members. PIJAC represents all segments of the industry — pet shops, livestock breeders/brokers, livestock importers, product distributors, and product manufacturers. Our members include persons involved in the importation, exportation, captive breeding, acquisition, sale and possession of wildlife, not only for companion pet animals, but also for zoological specimens and biomedical research.

My testimony today is limited solely to the live animal trade. PIJAC traditionally has endorsed efforts to stop illegal interstate and foreign trafficking in wildlife and wildlife products. As we testified during various hearings leading to the 1981 Lacey Act Amendments, PIJAC recognizes the need for viable legislation which provides adequate enforcement tools.

More stringent forfeiture provisions coupled with increased criminal and civil penalties have proven to be a deterrent. We recognize, however, that there continues to be a number of problems which limit the effectiveness of wildlife enforcement. We do not feel, however, that the existing wildlife laws are inadequate to carry out the Congressional mandate to ensure effective regulation and enforcement.

Effective law enforcement should not be measured and evaluated by relying on tally sheets showing numbers of seizures, forfeitures, civil penalties, or criminal convictions. That data alone does not reveal the true effectiveness of the program. In reviewing whether the Lacey Act is being "vigorously enforced", one should also examine law enforcement's non-prosecutorial role involving routine processing of documents, inspections, and dissemination of information. Increasing public awareness and striving for greater compliance, rather than playing "tough cops" may well prove more beneficial to conservation.

We believe that a series of steps should be implemented to ensure that Interior's Law Enforcement Division, its Solicitor's Office as well as U.S. Attorneys offices are provided sufficient guidance in that enforcement effort. The program today is hindered by:

1. Inadequate personnel and funding;

2. Lack of uniformity in administration of the wildlife laws resulting in discriminatory treatment in similar situations;

3. Lack of central control over field activities by the Law Enforcement Division in Washington resulting in discrepancies among the Ports as well as between the Ports and Washington;

4. Misplaced emphasis concentrating on technical rather than meaningful violations involving non-endangered species;

5. Anti-trade attitude;

6. Failure to implement bonding procedures (50 CFR §12.6);

7. Failure of the Department to provide public notice of changes in enforcement policy; and

8. Rigid attitude towards maximizing penalties rather than exercising discretion in compromising penalties and attempting to secure future compliance.

In my testimony before this Subcommittee in 1979, I outlined a series of problems encountered by the trade and referred to ad hoc, hip pocket justice administered at local ports where inspectors arbitrarily render binding interpretations of applicable laws and regulations, misidentify species and threaten importers. Agents, and in some instances Solicitors, employ strong-arm tactics to scare alleged violators and compel abandonment of a shipment if the "violator" desires to escape civil or criminal prosecution.

Once a determination has been made by an agent that a violation occurred, the case is turned over to the Regional Solicitor's Office and/or the local U.S. Attorney. In many instances, the alleged violation involves a minor, technical violation, often resulting from an honest mistake or an

incident over which the importer had absolutely no control. Rather than exercise discretion at the Port or at the Region, alleged violators are faced with shipment seizures, forfeitures, and civil penalties. Attempts to resolve the problem expeditiously often prove futile; we are whipsawed by bureaucratic buck-passing and often extensive delays. In the interim, shipments are normally seized, storage charges accrue, and the live animals are subjected to stress while being held by facilities and/or personnel not equipped to provide appropriate care.

On a number of occasions we have been advised by Law Enforcement agents as well as Solicitors and U.S. Attorneys that the objective of the wildlife laws is to stop the trade's utilization of wildlife. Serious misstatements regarding the law, especially the possibility of remission following seizure and/or forfeiture are not unusual. Statements by Interior officials that penalties should be as stiff as possible because (1) the wildlife trade makes too much money, (2) that one should not be allowed to make a profit in wildlife, (3) that trade will be eliminated, or (4) that anyone involved in the wildlife trade is a "crook", are totally inappropriate.

Recently we were advised by one of the Regional Solicitor's Office that it takes its instructions with respect to wildlife cases from the Boston region, not Washington, and that the regions don't care what Washington Law Enforcement believes. Needless to say, the trade finds itself in a quandary in trying to determine who is running the show. A national, uniform policy is essential if wildlife law enforcement is to be effective.

Several incidents during the past few years amply illustrate encounters which, in our opinion, detract from an effective and viable law enforcement program.

During the next few days, two captive bred Dama gazelles (CITES Appendix I, Endangered Species) will be subjected to unwarranted stress due to the Department's inability to process the requisite export papers and inspect the shipment at Atlanta's international airport. Due to severe manpower shortages, Atlanta remains a nondesignated port for importing/exporting wildlife. Rather than truck the two gazelles from Savannah to Atlanta — a three to four hour surface move — the gazelles will have to be trucked to Miami in 90° temperatures with high humidity, an environment not conducive to the most expeditious and humane movement of these animals to a port of embarkation. It is estimated that the in-transit surface movement will now entail 10 to 12 hours. At the present time, the Service's Atlanta Regional Office is staffed with two special agents responsible for supervising 34 agents and 5 inspectors in 10 states, Puerto Rico and the Virgin Islands. Additionally, the two Atlanta agents must fulfill the duties of Administrative Officer, Permit Officer, and Wildlife Inspector. Thus, they are not able to grant a nondesignated port permit (50 CFR §14.31 et seq.) and facilitate the movement by allowing the gazelles to enter international air transportation at Atlanta rather than Miami, New York, or Chicago. Adequate manpower should be assigned to Atlanta and the port reclassified as a designated port. Otherwise, existing law enforcement

policies will inflict continued pressures, not only on protected wildlife, but also legitimate trade.

On June 15, 1984, a New York importer tendered for clearance a shipment of finches from Australia. The importer was advised that as of May 1, 1984, all Australian permits must be executed by the Australian National Parks and Wildlife Service, not the Australian Customs Department. The shipment was accompanied by Australian export documents executed by Australian Customs on June 12, 1984 (43 days after Customs lost its authority) — documents similar to those previously accepted by U.S. Customs as well as the Fish and Wildlife Service as recently as April 13, 1984. The importer was advised that the shipment would be "conditionally released" pending final resolution. When the importer attempted to obtain information regarding the new rules and requested a copy of the Memorandum, he was informed that the Department could not provide such information to the importer. Following several telephone calls, the importer was allowed to read the document. When the agents were asked what could be done to cure the defect, they stated they did not have to provide such information.

To resolve the matter, the importer engaged counsel and contacted his Congressional Representative. But for the intervention of a Congressional office and attorneys, the shipment would have been ultimately seized due to circumstances beyond the control of the importer — the failure of a foreign government to comply with its own regulations. It was also learned that Washington had telexed information on new Australian procedures to the field

on April 1, 1984. The Department should institute a mechanism to notify importers of such changes in foreign government practices and procedures; it should also institute a policy permitting release of such shipments when it is clear that a foreign government failed to follow its own procedures.

A North Carolina animal dealer, in his first attempt to export CITES birds, shipped two molluccan cockatoos (CITES Appendix II Species) to Canada via Chicago. The birds were accompanied by requisite health certificates and Canadian import permits. The birds were seized at Chicago for not having U.S. issued CITES "re-export" permits. Not previously involved with CITES imports/exports, the dealer was not aware of all of the permit requirements. When the exporter was notified of the "violation", he inquired as to what he could do to cure the defect. He was advised that this was a very serious matter; that it was being turned over to a senior officer of the Fish and Wildlife Service; that they were building a case against him with three or four counts and fines up to $12,000; that forfeiture proceedings would be instituted; and that he could face felony charges because he had committed a criminal act.

Concerned not only for the welfare of the birds, but also for his personal welfare, the "defendant" retained counsel to determine what rights, if any, remained in his possession. I contacted the law enforcement agent and was rudely advised that this was a serious problem, that under no circumstances would remission be possible, that the dealer had lied because a North Carolina agent had previously explained the rules to the dealer, and I

had better read the Lacey Act and CITES regulations. Upon contacting the agent in North Carolina, I was advised that he had not discussed these matters with the dealer and had so advised Chicago. Subsequently, negotiations with the Regional Solicitor's Office resolved the matter. In the interest of time, economy, and the welfare of the birds, the birds were returned to the "defendant" upon his agreeing to pay the Fish and Wildlife Service a civil penalty of $200.00. I contend, Mr. Chairman, that this is not the proper application of law enforcement efforts.

A California bird importer received a shipment of captive bred finches from Germany which contained one more bird than appeared on the CITES export documents. The importer received a Notice of Violation that he had violated various wildlife laws: (1) the shipment contained one more bird (value $12.00 to $15.00) than appeared on the permit, (2) the foreign government issuing the CITES permit failed to indicate whether it was an export or reexport permit, and (3) that the importer did not possess an import license required by 50 CFR §14.91. The Notice of Violation also inferred that felony charges were possible and that the matter could be resolved by the payment of a civil penalty of "only" $4,000.00. The shipment was the second shipment handled by the importer and the value thereof caused his operations to fall within the licensing provisions. The importer immediately obtained an import license. The civil penalty was ultimately reduced to $800.00 — an excessive penalty, but economics dictated

settlement. This case did not warrant the time expended by Law Enforcement, the Solicitor's Office, or private counsel.

Another time consuming and costly activity for importers and Law Enforcement involves utilization of seizure/abandonment/forfeiture procedures on shipments containing more specimens than provided for in the export documents, the accompanying invoices, or purchased by the importer. In some instances, shipments are subjected to threats of seizure because a foreign government misspells a scientific name, such as substituting an "o" for a "u". Importers have no ability to control the activities of the exporters who overpack intentionally or inadvertently miscount, or errors of foreign governments. The time consumed to effect seizures, abandonment and/or forfeiture of such specimens is substantial.

The CITES mechanism provides a unique method for the United States to encourage the CITES Secretariat as well as the CITES members to take such remedial action as necessary against exporters. It also affords an opportunity to assist foreign governments in curing defects. Penalizing importers for acts totally beyond their control is unfair, unjust and of questionable constitutionality. The Service should explore the feasibility of resolving such issues expeditiously at the port without having to implement somewhat cumbersome procedures for obvious technical errors.

PIJAC submits that implementation of the following proposals will go a long way towards curing the lion's share of the problems outlined above:

1. **Import/Export Manual.** The Service recently published an Import/Export Manual containing procedures, policies, and information with respect to importation/exportation of wildlife. The Manual purports to reflect the official policy of the Service and should assist in attaining greater uniformity.

The Manual contains information on procedures affecting inspections, wildlife identification, in-transit shipments, foreign government action (or lack thereof), seizure/abandonment/forfeiture, re-export, etc. The Manual also contains Special Policy Statements regarding selected species as well as the names and addresses of foreign management authorities and samples of "acceptable" foreign documentation.

This Manual should be readily available for public inspection at each port. The public should be permitted to copy pages at their own expense and/or be able acquire copies of the Manual on a subscription basis.

The Manual does not contain, however, much needed information on (1) foreign laws and regulations, (2) changes in foreign policy, including changes in agencies authorized to issue permits, (3) changes in U.S. policy with respect to particular practices of foreign governments, or (4) updates and revisions in a timely fashion. Such information is transmitted to the field telephonically, in memoranda, or via telex. The Service, particularly at the field level, is most reluctant to disclose such information and will virtually never do so in writing. PIJAC's attempts to induce the Service to publish such information in the Federal Register so as to place the public on

notice, especially in light of potential felony sanctions, have fallen on deaf ears. Expansion of the Manual as well as greater dissemination of the Manual is needed.

2. **Federal Register Notices.** Ferreting out the applicable underlying wildlife laws as a condition precedent to acquiring, transporting, importing, exporting, selling, or possessing wildlife is not as easy as one might believe. Previous hearings on the Lacey Act have clearly demonstrated the difficulties encountered in uncovering, let alone proving the existence of, foreign laws. An inadvertent error or innocent mistake may well lead to costly encounters with the Service. Requiring one to adhere to a "due care" standard is a simplistic and meaningless standard. One is compelled to adhere to a standard which the Service itself cannot define.

When the Service obtains information regarding a foreign law, interpretations of that law are often made at the port by Fish and Wildlife agents but are nonbinding if the Region or Washington conjures up a different interpretation. Shipments can be tied up for months while the Service and the importer attempt to unravel the facts and determine what foreign laws, rules or practices, if any, are involved. But in the meantime, the public is at risk.

Implementing a notice mechanism to changes (1) in Departmental policy, especially as it affects the acceptance of documentation and clearance of shipments, and (2) in foreign government policies and procedures is essential if we are to give any credence to a "due care"

standard. Under existing conditions, one learns of policy changes when the shipment is seized.

3. **Implementation of Existing Bond Procedures.** The Department should adopt regulations implementing the bond procedures referred to in 50 CFR §12.6, so that shipments may be released under bond pending resolution of questions regarding the shipment. Presently, exorbitant amounts of time and effort may be expended in attempting to obtain a bond. Regional Offices are loathe to issue bonds, partly due to the absence of guidelines, and partly due to a belief that a bond does not impose enough financial injury on importers. Some ports absolutely refuse to utilize the bonding process.

Implementation of a bonding system would prove beneficial to the Service as well as to the wildlife. When a shipment is questioned, a bond could be processed and the live animals immediately placed in competent and adequate facilities to reduce stress and ensure humane care. Costs related to veterinary care, maintenance and storage would be substantially reduced. It would also alleviate pressure for making hasty and sometimes ill advised decisions regarding the status of a shipment. Rather than incur expenses of proving one's innocence, paying storage fees, and possibly receiving sick or dead specimens when the shipment is returned, importers give up and abandon the shipment. PIJAC has urged the Department to adopt procedures so that bonds could be utilized in a fashion similar to those permitted by U.S. Customs.

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4. **Centralized Control.** To attain maximal uniformity in administration of the wildlife laws, enforcement activities should be controlled from a centralized location. The Division of Law Enforcement in Washington should be provided direct line control over all enforcement activities to avoid discriminatory treatment, to ensure efficient and effective administration of policy, and to obtain reliable information. It is disconcerting, to say the least, to learn that the Service's policies in Washington can be totally ignored in the field. On too many occasions, I have been advised by Regional Offices as well as by the ports, that they don't care what Washington's Law Enforcement Division believes to be the law. We believe the program would attain greater credibility, uniformity and effectiveness if the Law Enforcement Division in Washington possessed line control over all field activities.

5. **Seizure/Forfeiture Policies.** An area which is of concern to all of us involves seizures and/or forfeitures. The Lacey Act Amendments of 1981 provide for strict forfeiture of fish, wildlife and plants on a strict liability basis if the objects were "contraband". During the course of those hearings, concern was expressed by the trade of improper application of strict forfeiture provisions. The Congress recognized that there would be instances

> ...where the merchandise assumes contraband status as a result of a minor, technical violation. For example, as a result of an honest mistake, an individual may not have all of the foreign

> documentation that is required for importation of a non-endangered species. Following seizure in this country, either before or after a decree of forfeiture has been entered, the individual may provide the Secretary, or the Attorney General, with reliable proof from the foreign country that the shipment was in fact a legal shipment. In such a case, the government has the discretion to remit our (sic) mitigate the forfeiture. The Committee urges the Secretary and the Attorney General to develop a policy regarding such remissions and mitigations that affords the owners of property to forfeiture (sic) the opportunity to prove their good faith or innocence and the fact that the merchandise was legal, even if the importation was not technically in compliance with the law. House Report No. 97-276, 97th Congress, 1st Session, Report to accompany H.R. 1638, at pp.22-23.

Senate Report No. 97-123, 97th Congress, 1st Session accompanying S. 736, also recognized the problem and adopted similar language at page 13 of the Report. Strict liability forfeiture has its place when it comes to serious violations, or importation of endangered species. Neither the Department nor the Attorney General, to the best of our knowledge, has followed the Congressional mandate to develop such standards as called for in the Senate and House Reports. The policy guidelines contained in the Import/Export Manual do not fulfill the Congressional mandate. Such policies should be developed to permit remissions and mitigations.

During the past year, we have been involved in dealings with law enforcement officials, attorneys in the Solicitor's Office, and U.S. attorneys regarding importations of various wildlife shipments. An attitude has become abundantly clear; that when the United States feels that anything is wrong with the shipment, it is the United States' obligation to go for strict forfeiture rather than differentiate between substantial violations and

insignificant, technical violations. In the case of CITES shipments, for example, we do not perceive the necessity for strict forfeiture in an instance when it is clearly a minor, technical violation; and/or that the importer was not complicit in any illegal activities or in the creation of the technical violation.

In one instance, forfeiture was threatened when an airline admittedly lost the original CITES export documents and could only provide duplicate copies. Following threatened seizure and ultimate forfeiture and assessment of civil penalties, the shipper retained counsel who engaged in extensive discussions with Law Enforcement in Washington, the Assistant Secretary's office, the Associate Director of Fish and Wildlife, the Regional Office, the Port's agents and inspectors, and airline personnel in London and Miami. The shipment was ultimately released. The effort expended by the Service in this instance could have been and should have been applied elsewhere. Guidelines, in conformance with the Congressional mandate, still need to be developed and published.

6. Public Workshops/Roundtable Discussions. Attempts should be made to transpose an adversarial, anti-trade attitude to one of cooperation. PIJAC believes that the Service should reinstitute wildlife workshops similar to those held in New York, Chicago and Los Angeles a few years ago. The workshops provide a unique opportunity for the Service to disseminate information and exchange ideas with affected parties for the purpose of ensuring greater compliance, not confrontation.

To resolve more localized problems, we believe the Service should convene roundtable discussions at each of the ports so that the special agents, inspectors, and regulated parties can meet to discuss collectively issues of concern to the Service as well as to the trade; it would allow for periodic review of port and trade practices and procedures, the exchange of information, and hopefully, lead to greater efficiency, understanding and compliance.

7. Manpower/Funding. Adequate personnel and funding obviously are at the heart of an effective law enforcement program. I am confident that the Service will more than adequately justify its need for increased manpower and funding. PIJAC urges the Congress to provide the Service the funds necessary to disseminate information, increase manpower levels, upgrade its training programs, and uniformly administer the law in a nondiscriminatory manner.

In conclusion, Mr. Chairman, the Committee must bear in mind that the Department must not blindly adhere to ill defined standards and demonstrate success by publishing tally sheets of "traffic tickets". The Service should strive for uniform, nondiscriminatory enforcement of the law, with a view toward ensuring that the policies underlying these laws are met.

Mr. Chairman, again I want to express my appreciation for being provided an opportunity to testify today. We look forward to working with this Committee and the Service to obtain a more effective and efficient law enforcement program.

June 26, 1984

Testimony by

ROBERT O. WAGNER, EXECUTIVE DIRECTOR

AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

before the

UNITED STATES SENATE

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

hearings on

LACEY ACT ENFORCEMENT

26 June 1984

Mr. Chairman and Members of the Subcommittee:

I am Robert Wagner, Executive Director of the American Association of Zoological Parks and Aquariums. I wish to thank you for this opportunity to address your subcommittee on implementation of the Lacey Act. The AAZPA is the largest professional zoological park and aquarium organization in the world. AAZPA represents virtually every professionally operated zoological park, aquarium, wildlife park and oceanarium on the North American Continent, and the vast majority of the professional staff members employed therein. AAZPA also represents and is the official spokesman for nearly 1,000,000 members of various zoological park and aquarium support organizations that offer assistance to zoological facilities in their communities. Collectively, zoos and aquariums in this country annually play host to more than one hundred million visitors. Dr. Bruning, the Legislation Committee Chairman of AAZPA and the Curator of Ornithology at the New York Zoological Park, and I will divide our areas of emphasis. I will address the role zoos play in the seizure of wildlife and some of the past problems encountered by our members because of their cooperation. Dr. Bruning will address some of the inconsistencies we see in the present enforcement of the Lacey Act.

AAZPA strongly urges that the wildlife laws of the United States be enforced in an aggressive but yet consistent and fair manner. Our members have, in the past, and will continue to offer their support in enforcement efforts. One of the stated objectives of AAZPA is: ".... cooperating with governmental agencies for the health and welfare of animals...."

AAZPA and its member institutions have cooperated with the Departments of Interior, Agriculture, Treasury and Justice over the years by holding seized wildlife. Once wildlife is seized by the government, the local zoos are normally called upon to help. If the wildlife is birds or hoofed animals, the seizure is not made until the wildlife is released from the required federal quarantine. In some cases, zoos are called upon to assist immediately upon seizure of wildlife. The assistance of

zoos is required because the government has no adequate holding facilities nor the expertise necessary to maintain exotic wildlife.

Those zoos located close to designated ports of entry are called upon frequently to assist. These include: New York Zoological Park, Metrozoo-Miami, Brookfield Zoo, Lincoln Park Zoological Gardens, San Diego Zoo, San Diego Wild Animal Park and Los Angeles Zoo. The zoos must carefully choose what wildlife they can accept and hold for the government because of space limitation. Few zoos have the extra space required to hold large shipments of wildlife without seriously endangering the health of the seized wildlife or that of their own zoological collection.

In the past when zoos held wildlife, there was no formal agreement entered into between the government and the zoos to guarantee that the zoos would be reimbursed for the costs they incurred on behalf of the government. The terms of payment and the conditions attached to the holding of the wildlife were very uncertain. Moreover, payment by the government was always delayed.

I will briefly cite three cases involving the San Diego, Brookfield and Los Angeles Zoos which illustrate many of these problems: On 23 March 1979, the San Diego Zoo was asked to hold 183 birds representing 23 species. After holding the birds until 11 April 1980, the birds were picked up and taken to an auction where they were sold to the highest bidder, without regard to the bidder's qualifications or a determination of the adequacy of housing facilities. The San Diego Zoo was also required to bid on and pay immediately for all birds that they desired to obtain. This occurred even after the zoo had signed an agreement with the government which stated that the zoo could retain those birds they desired for their own collection. It was over two months before the San Diego Zoo was reimbursed for its expenses incurred in holding the birds for some fourteen months.

The Los Angeles Zoo was asked to hold over 500 parrots seized by the U.S. government. After months of holding the birds, many of which died from a highly

infectious disease, the birds were returned to the importer. The Los Angeles Zoo lost several of its own birds due to the introduced disease and was initially refused payment for care of the seized birds, because many of them had died. Eventually, the zoo received some payment for its efforts; but this, in no way, compensated for the loss of their birds or began to cover the veterinary and maintenance costs involved.

In 1982, the Brookfield Zoo was asked to hold a large shipment of birds. An agreement was reached on compensation for care before the zoo accepted the birds. The government then proceeded with plans to auction the birds to anyone who might want to purchase them, including the individuals who had illegally imported the birds. The threat of lawsuits prevented the public auction. Because of the time required for all the legal action to occur, however, many of the birds died before permission was granted to allow distribution to suitable facilities where they could have all been housed to avoid stress and rapid spread of various avian diseases.

As a result of the tremendous financial loss and near total frustration by several AAZPA member institutions and the continued concern with the welfare of seized wildlife, AAZPA began working with the Fish & Wildlife Service (FWS) in 1979 on the problem of the disposition of seized wildlife. Finally, in 1982, a Memo of Understanding on the Disposition of Seized Wildlife (MOU) was signed by the Departments of Agriculture, Justice, Interior and Treasury. This MOU addressed the seizure, forfeiture and disposal of illegally imported live wildlife, the handling costs and the distribution of proceeds from their sale.

The specific purposes of the MOU are: (1) Coordination of the individual efforts at enforcing statutory responsibilities for importation of birds and other wildlife, (2) establishment of procedures for seizing, quarantining and disposing of illegally imported birds and other wildlife through forfeiture and public sale, and (3) determination of the distribution of costs and proceeds collected with such

activity. In the MOU, AAZPA Institutional members are enlisted to cooperate with the government in caring for live wildlife the FWS has seized. In addition to working with the Fish & Wildlife Service to hold seized wildlife, we work with many other agencies (including the National Marine Fisheries Service and the Animal and Plant Health Inspection Service) in caring for sick, injured and stranded wildlife.

Once the MOU was signed, AAZPA and FWS, which is the primary seizing agency for wildlife, began working on a separate agreement to implement the MOU. This agreement begins where the MOU leaves off and is the nuts and bolts guideline that will be followed by both FWS and AAZPA when a seizure occurs. The two signatories of this agreement will be FWS and AAZPA.

AAZPA Institutional members indicated that, based on past costly experience, they were unwilling to enter into a formal agreement unless the FWS guaranteed to pay their expenses. It appears that this problem has been at least partially taken care of because both the Senate and the House of Representatives have passed a bill to establish a revolving fund to pay for the ".... reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife or plant pending the disposition of any civil or criminal proceeding alleging a violation of this Act with respect to that fish, wildlife or plant."

AAZPA representatives, including Dr. Bruning and myself, attended a meeting last week with officials from the FWS, Law Enforcement Division, to discuss the MOU. Both AAZPA and FWS agreed to work on those few areas of concern which remain before a MOU could be signed. Currently, the AAZPA is conducting a survey of its zoological institutions to determine their individual interest in the participation in a clearinghouse arrangement. If a sufficient number are willing, AAZPA will establish a special committee to be contacted by FWS in the event a seizure of wildlife is about to occur. Our special clearinghouse committee will then rapidly move to provide suitable temporary homes and professional levels of care for the seized

wildlife while the government litigates the case. However, Mr. Chairman, I must take this opportunity to advise this committee and the FWS that space is a critical factor in most zoological parks and aquariums and, contrary to popular opinion, our member institutions are not anxiously awaiting for FWS to make seizures so that those institutions can fill up empty exhibits. I cannot overemphasize the fact that our participation in holding seized wildlife is solely for the benefit of the wildlife and to assist in thwarting the illegal trafficking in wildlife.

We are concerned with the illegal trafficking in wildlife and feel it must be stopped. In that regard, we have recently joined with the World Wildlife Fund in its endeavors to end illegal trade in wildlife. The United States, as a leading nation in terms of wildlife conservation, must also become a leader in enforcement of its conservation laws.

Thank you for the opportunity to testify before the subcommittee. I will be glad to answer any questions the subcommittee may have.

STATEMENT OF

Donald Bruning

Curator of Ornithology

NEW YORK ZOOLOGICAL SOCIETY

Secretary

Parrot Specialist Group

Of The

INTERNATIONAL COUNCIL FOR BIRD PRESERVATION'S

INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE

Legislative Chairman

Of The

AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS AND AQUARIUMS

On The

LACEY ACT

BEFORE

THE SENATE SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

Washington, D.C.

June 26, 1984

Mr. Chairman and Members of the Subcommittee, I am Donald Bruning, Curator of Ornithology for the New York Zoological Society. I am also Legislative Chairman of the AAZPA and Secretary of the Parrot Specialist Group of the International Council for Bird Preservation (ICBP) for the International Union for the Conservation of Nature (IUCN).

The New York Zoological Society operates one of the oldest and largest zoological parks in North America, the Bronx Zoo. The Zoological Society also operates an aquarium and research laboratory at Coney Island, as well as a worldwide conservation network. The Zoological Society has been active in worldwide wildlife conservation since its inception in the late 1890's. At all times the Society has scientists in the field conducting research and promoting conservation in anywhere from twenty to fifty countries around the world. As a result of these worldwide contacts we are able to monitor and even influence conservation around the world.

The International Council for Bird Preservation (ICBP) has its headquarters in Cambridge, England with national offices in countries around the world. ICBP is charged by the International Union for the Conservation of Nature (IUCN) to set up international specialist groups to advise them on the plight of endangered birds and on what actions are necessary to protect the world's bird fauna.

The AAZPA Executive Director has provided testimony on behalf of AAZPA, so I will direct my testimony to concerns of the ICBP and the New York Zoological Society. However in most cases the concerns are also those of AAZPA, as we are all concerned with the welfare and protection of the world's wildlife.

The New York Zoological Society is called upon several times each year to hold seized wildlife. We like many other zoos have been forced to carefully choose what wildlife we can take and hold for the government because of serious problems in the past. Few if any facilities have space available to hold large shipments without seriously endangering the health of the seized wildlife or that of their own zoological collections.

The following are a few examples of problems encountered:

In March of 1977 a U.S. Customs agent found two Black Palm Cockatoos (a threatened species with full protection in all the countries where it is found in the wild) in the false bottom of a suitcase at J.F.K. Airport. The Fish and Wildlife Service was notified and they seized the birds. Once out of USDA quarantine the birds were brought to the New York Zoological Park. The birds were held by NYZS for fourteen months with the understanding that ownership would go to NYZS once the case was settled in court. On legal technicalities the Fish and Wildlife Service called one day to pick up the birds, the following day to return them to the importer. The New York Zoological Society received not one penny in compensation for holding the birds for fourteen months.

In the past when such wildlife was held by zoos, there was no actual formal agreement to guarantee that the zoos would be reimbursed for the costs incurred by the zoo on behalf of the Government. Many times these cases can drag on for years. Another Black Palm Cockatoo currently being held by the New York Zoological Society was seized in November 1979. The Zoological Society has advised the U.S. governmental agencies involved that the charges currently owed for maintaining the bird now exceed the value of the bird

and that we cannot return the bird without payment of holding charges which are based on the charge schedule developed by the USDA for maintaining birds in their quarantine stations. To date the NYZS has not received payment for the care of this bird and the case remains unresolved.

In June of 1983 a shipment of twenty-seven Palm Cockatoos and several other species was permitted entry through the entry port of Miami.

In October 1983 another shipment of one hundred Palm Cockatoos and twenty-eight Eclectus Parrots (another species fully protected in all the countries where it occurs in nature) went into USDA quarantine in Miami, while yet another group of twenty and a third group of three were presented for entry into the U.S. in Los Angeles. In November a total of eleven zoos agreed to hold the Palm Cockatoos and Eclectus Parrots seized in Miami and the small group of three Palm Cockatoos seized in Los Angeles. The other group of twenty Palms in Los Angeles was released under bond to the importer and was subsequently sold. Currently the Justice Department is proceeding to seize the bond money these birds were released upon. The USFWS Office of Law Enforcement, the AAZPA and the eleven holding institutions are currently negotiating the final disposition of the Palm Cockatoos seized in Miami. The USFWS and the Justice Department settled the case with the importers in Miami which resulted in forfeiture of the birds to the USFWS and the payment of forty-five thousand dollars to the importer.

These five separate importations of Palm Cockatoos demonstrate a serious problem in the lack of consistent enforcement of the Lacey Act. This lack of consistency does not act as a deterrent for importers of illegally acquired birds but simply as a gamble which until recently had odds in their favor.

It has come to our attention that the Miami importer is currently attempting to import an additional seventy-five Palm Cockatoos and has filed for a temporary restraining order in federal court in Miami.

We have continually assisted both the USFWS by holding birds for them and the Justice Department by helping to acquire copies of other countries' laws and by providing expert testimony and advice. We shall continue to do this for the sake of the wildlife involved and because of the need to conserve the world's wildlife.

Recently the New York Zoological Society was asked for advice and aid by the Bolivian Wildlife Society. We were asked to help them care for several hundred parrots and dozens of primates seized by the Bolivian government before they could be illegally exported. The Society is providing financial aid to care for the seized animals in Bolivia until some or all of them can be released back into the wild. At the same time we are providing advice and counsel to the Bolivian Wildlife Society and Bolivian Government Officials. Unfortunately it is my understanding that within the past month USFWS has allowed the entry into the U.S. of three shipments of Bolivian birds, even though the CITES Secretariat had advised them that the permits presented were not legal.

Another example of the current problem can be seen in pet shops across the country. Hyacinthine Macaws (large blue parrots from Brazil) are offered for sale in most large cities in the U.S. to anyone with the money to buy one. However neither the New York Zoological Society nor any other knowledgeable institution can legally buy one, as we know that nearly all if not all Hyacinthine Macaws were illegally removed from their country of origin, Brazil.

Brazil does not allow commercial export of its birds. Bolivia until recently did. Bolivian officials admit that probably only about 500 of these birds exist in the wild in Bolivia and yet each year for the last four or five the U.S. alone has allowed the importation of 1,500 per year from Bolivia and previously Paraguay where the bird has never occurred in nature. Remember that we at the Bronx Zoo would be in violation of the Lacey Act if we knowingly purchased a Hyacinthine Macaw which we knew was smuggled out of Brazil; but common citizens are purchasing these birds openly in pet shops every day.

The Los Angeles Zoo was asked to hold over five hundred members of the parrot family seized by the U.S. Government. After months of holding the birds, many of which died from Pacheco's disease, the birds were returned to the importer. The Los Angeles Zoo lost several of its own birds due to the introduced disease and was initially refused payment for care of the birds because many of them had died. Eventually the zoo received some payment for all its efforts but this in no way compensated for their own loss of birds or began to cover all the veterinary and maintenance costs involved.

The Brookfield Zoo in Chicago was asked to hold a large shipment of parrots and other birds in 1982. An agreement was reached on compensation for care before the zoo accepted the birds. The government then proceeded with plans to auction off the birds to anyone who might want to purchase them, including the individuals who had imported the birds illegally in the first place. Only threats of lawsuits prevented this auction. Because of the time required for all the legal action to occur however, many of the birds had died before permission was granted to allow distribution to suitable facilities where

they could all have been housed separately to avoid stress and the rapid spread of disease.

These few examples clearly indicate the lack of enforcement or the inconsistent enforcement of U.S. wildlife laws. As a result we urge you to remember the plight of the world's wildlife and to help put the U.S. back into the lead in international wildlife conservation. We shall also do our part and stand ready to assist in any way that we can.

The New York Zoological Society, the AAZPA and the ICBP Parrot Specialist Group appreciate this opportunity to testify on the Lacey Act. We feel that this act, in conjunction with the Endangered Species Act and other wildlife laws here in the U.S., helps to support the intent of the Convention on International Trade in Endangered Species (CITES). The laws here in the U.S. are adequate for protecting wildlife if they are enforced in a consistent and active manner. We urge that this subcommittee does all within its power to see that these laws are aggressively enforced. We understand that the inability of the Fish and Wildlife Service to aggressively enforce the nation's wildlife laws is often tied to lack of funds or lack of facilities to care for wildlife requiring special care. We, along with concerned officials in all of the governmental agencies involved, would like to see the wildlife laws of the U.S., such as the Endangered Species Act and the Lacey Act, enforced in a consistent and fair manner. This is important if we are truly interested in the welfare and future of the world's wildlife heritage. Without reasonable law enforcement here in the U.S. most of the countries around the world have little hope of enforcing their own wildlife laws. The monetary incentives of illegal activities are simply too great.

Mr. Chairman, this completes the testimony on behalf of the New York Zoological Society, the American Association of Zoological Parks and Aquariums and the Parrot Specialist Group.

National Audubon Society

NATIONAL CAPITAL OFFICE
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TESTIMONY OF
KENNETH BERLIN

ON BEHALF OF THE
NATIONAL AUDUBON SOCIETY

BEFORE THE
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

JUNE 26, 1984

AMERICANS COMMITTED TO CONSERVATION
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Mr. Chairman and members of the Subcommittee:

This testimony was prepared and written by Mr. Ken Berlin on behalf of the National Audubon Society. Unfortunately at this very moment, Mr. Berlin is engaged in litigation in Alaska on our behalf.

My name is Amos S. Eno. I am here today representing the 550,000 members of the National Audubon Society and their continuing and historically strong support for a vigorous effort to stop illegal trade in wildlife and plants. That effort dates back to the founding of the National Audubon Society when, at the turn of the century, state Audubon groups, the predecessors to the National Audubon Society, formed a national organization to stop a bird trade that was driving numerous species of shore birds, herons, egrets and terns towards extinction.

That early Audubon effort was remarkably successful. Because birds are highly migratory, and the traders in their skins, carcasses and feathers are equally adept at crossing state lines, it became apparent in 1901 that the country needed a federal law to stop illegal trade in wildlife by prohibiting interstate traffic in birds and animals killed in violation of state law. John F. Lacey of Iowa, a noted proponent of conservation, introduced the bill that became the Lacey Act of 1901. At that time, only five states had laws protecting their wildlife. By 1905, 33 states had such laws. Today, most of the species threatened at the turn of the century have recovered.

Unfortunately, we still have species in the United States, such as bald eagles, peregrine falcons, gyrfalcons and numerous other raptors and various commercial and endangered species that remain seriously threatened by trade. Even more ominously, the threat to many species from unregulated trade that has such a devastating effect on U.S. species at the turn of the century is now being repeated throughout the developing world. In lesser developed nations, we are witness to massive habitat destruction that restricts the range and numbers of many species. When that is accompanied by excess trade, or when certain naturally vulnerable species are subject to such trade, the effects can become devastating. Today, over 32,000 species are listed on the Convention of International Trade in Endangered Species. By definition of the treaty, such species are threatened by unregulated trade.

This committee carefully addressed the problem of unregulated trade in wildlife during hearings held in 1979 and 1980, hearings that led to the passage of a vastly strengthened Lacey Act. In the Senate Committee Report accompanying the bill, you wrote:

> " . . . . In recent years, investigations by agents of the various agencies charged with enforcing wildlife laws have uncovered a massive illegal trade in fish and wildlife and their parts and products. Evidence indicates that much of this illegal, and highly profitable, trade is handled by well organized large volume operations run by professional "white collar" criminals.
>
> The illegal wildlife trade has grim environmental consequences. It threatens the survival of many species of wildlife, particularly those which we value because of their aesthetic or commercial values. The economic consequences of this trade are also severe."

The Lacey Act Amendments of 1981 attempted to deal with this problem by, among other things, strengthening the criminal and civil forfeiture provisions of the Lacey Act. Therefore, the most appropriate subject of this oversight hearing is to review whether the Lacey Act Amendments of 1981 have achieved their goal. In looking at that issue, I will address whether: (1) the Law Enforcement Division of the Fish and Wildlife Service (the "FWS") is allocating adequate resources to the wildlife law enforcement problems that pose the greatest threat to species; (2) the FWS has developed sufficient major cases; and (3) the FWS can take additional steps to ease the industry compliance burden while still helping law enforcement.

A. Priority Resource Problems —

One of the most difficult questions facing enforcement agencies is how they should allocate their resources. In the wildlife area, the principal question is whether these resources should be allocated to domestic taking, domestic trade, or international trade cases.

One of the most striking aspects of the hearings that led to the 1981 Lacey Act Amendments was concern about international trade in wildlife. Today, international trade poses, from an overall environmental perspective, the most important of the wildlife enforcement problems since it threatens the survival of so many species around the world. Despite this clear conservation challenge, and despite congressional concern about this trade, the FWS has traditionally slighted or ignored the international trade problem. In part,

this attitude is understandable since there are many important domestic wildlife trade and taking problems and there are all too few resources to deal with those internal problems. Nevertheless, Congress intended, and we need, a balanced wildlife law enforcement program. At the moment, we are not getting one. While the FWS has made a number of important, and indeed spectacular, domestic cases over the past few years, they have made almost no major import forfeiture cases. We urge, as part of this oversight process, that you carefully review the components of the FWS law enforcement program. We recommend that you urge the Law Enforcement office of the FWS to devote 10-20% of its agents' (not inspectors') time to international trade cases.

In urging that you require the FWS to devote more resources to international trade, we would like to reinforce your findings during the Lacey Act Amendment hearings that we are faced with a major problem in international trade in wildlife. Attached to my testimony and to the testimony of Russell Train is an appendix which analyzes various import documents received from the Fish and Wildlife Service and which shows a significant problem with these documents. As a former chief of the Wildlife and Marine Resources Section of the Land and National Resources Division of the Department of Justice, and as one who has worked on many trade cases and investigations, I can say with great confidence that the documentary evidence contained in the appendix merely scratches the surface of the illegal trade.

Let me give you one example.

The joint appendix shows that the Fish and Wildlife Service failed to stop the entry of various kinds of illegal wildlife from Brazil, even though it is well known that Brazil prohibits such trade and despite the fact that the shipments were clearly labelled with Brazil as the country of origin of the wildlife. In reality, only the most unsophisticated trafficker in illegal wildlife would make the mistake of labelling the wildlife as Brazilian. The great majority simply smuggle the wildlife into neighboring countries and list these countries as the country of origin of the wildlife. Vast quantities of wildlife enter trade in that fashion.

One reason why the FWS appears to be reluctant to apply resources to international trade cases appears to be a feeling on the part of the FWS that they cannot successfully prosecute illegal traders in wildlife because proving Lacey Act import cases is too difficult. There is, however, no reason for this defeatist attitude. There is no doubt that such cases are difficult, but enough import cases now have been made to show that they can be made successfully.

B. The Need to Make "Major" Cases

Another problem is that it is time consuming and expensive to make major import criminal cases. Of course, that problem is endemic to all law enforcement. It is often a lot easier for an agency to make hundreds of small cases than one big case. There is also pressure on individual agents to sacrifice quality for quantity in their cases. For example, when an agent

spends one year working on a case that ultimately does not work, his record for the year may look terrible. It has been my experience that the agents who work on the biggest, highest quality cases are often the last to be promoted.

Unfortunately, however, hundreds of small cases can add up to less than one big case. Big cases are heavily publicized. Suddenly, illegal traders feel that nobody is safe anymore. The Act starts having the deterrent effect Congress intended.

Thus, as part of your oversight review, we urge you to distinguish between big and small cases. We suggest that you ask the FWS to state the number of cases:

-- involving international trade that led to jail sentences of more than six months (3 months in the case of endangered, threatened or CITES species) and whether those sentences were suspended;

-- involving international trade that led to forfeitures of wildlife worth more than $20,000 ($5,000 in the case of endangered, threatened or CITES species);

-- involving international trade that led to multiple arrests, the number of such arrests, and the penalties incurred;

-- involving domestic trade that led to jail sentences of more than six months (3 months in the case of endangered, threatened or CITES species) and whether those sentences were suspended;

-- involving domestic trade that led to forfeitures of wildlife worth more than $20,000 ($5,000 in the case of endangered, threatened or CITES species);

-- involving domestic trade that led to multiple arrests, the number of such arrests and the penalties incurred;

-- involving endangered or CITES species of such rarity that the case deserves to be considered major regardless of the penalty incurred.

Unless you use such objective criteria, you will not be able to judge the meaning of the statistics you receive from the FWS. Again, the goal is to seek a balance. We are not urging that small cases should not be made. We are urging that a law enforcement program that does not apply significant resources to major cases will be a failure.

As indicated above, efforts to protect species involved in international trade must be given a special priority. Many such species, including many spectacular ones, are in severe danger. Elephants are a good example. It has recently been estimated that in some areas the number of African elephants has dropped 90% in the last 10 years. There is a general concensus that much of this decline has resulted from excess trade in ivory. As part of your oversight process, we urge you to explore whether the FWS has specific enforcement programs to deal with problems like the ivory trade. Is there an FWS team working on this problem? In making this review, we also urge you to look at the consistency and coherence of the FWS program. Is there a FWS expert who has devoted his time for a long period to this trade and thus has learned who the dealers are, etc.? Are there such programs for other species? Is there an adequate forensic capability in the law enforcement program?

C. Ease of Compliance

At the hearings today, you will be hearing testimony from wildlife user groups. I would like to take this opportunity to praise the efforts of most

of these groups to encourage their members to comply with trade law. It was my experience when I was with the Department of Justice that these groups deplored illegal trade in wildlife and that they helped the government whenever they could.

The support of these groups is based on recognition of the plight many species can face from excess trade. These groups know all too well that a few rotten apples within their midst can spoil the batter for everyone else. These groups are owed two things in return, both of which will benefit wildlife.

First, they are owed a vigorous enforcement effort by the government against illegal traders. Unless this occurs, it is too easy for people to start wondering why they should comply with the law when someone they know is getting rich through noncompliance. Eventually, people who ordinarily would never violate the law cannot resist the temptation to violate it. Here, as in other areas, failure to enforce the law saps the strength of even law abiding citizens.

Second, they are owed a vigorous effort by the government to aid them in complying with the law. They are not getting that cooperation. There are still no regulations explaining what permits are necessary and when. It is still very difficult for an importer to find out what the law is in another country. There are still no adequate identification manuals or training sessions for inspectors in difficult identification problems for critical

species such as parrots and macaws. There is still no way in which the FWS and the Justice Department disseminate the results of their cases and investigations in a manner useful to the industry. All of the above have been proposed in recent years.

Taking some of the above steps would aid the industry, reduce inadvertent violations, and greatly simplify law enforcement. One step which we recommend is for your committee to urge the FWS to start publishing a "monthly" Wildlife Trade Bulletin, either in the Federal Register or by subscription, in which FWS officials summarize cases, information they have learned in recent cases, appropriate CITES notifications, etc. For example, if the FWS determines that there is no country in the world that allows the legal export for commercial purposes of black palm cockatoos, the subject of recent forfeiture actions, they should widely publicize this fact. If they do, the industry will be on notice that the species probably cannot be imported and that they had better be very careful before purchasing the species. Inadvertent violations thus would be eliminated or minimized.

Conclusion

As described above, we believe the Lacey Act is a workable statute that should be vigorously applied. We request this committee to urge the FWS to apply it in a balanced fashion, to devote sufficient resources to import and "major" cases, and to start publishing a monthly "Wildlife Trade Bulletin."

Thank you.

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STATEMENT ON ENFORCEMENT OF THE LACEY ACT

Before the Senate Subcommittee on Environmental Pollution

June 26, 1984

by Christine Stevens, Secretary

On behalf of the Society for Animal Protective Legislation I wish to express appreciation for the opportunity to testify at this hearing. The important strengthening of the Lacey Act in the 1981 amendments is due to the wisdom and work of this Subcommittee and especially gratitude is due to you, Mr. Chairman.

We are grateful, too, for the dedication of the Law Enforcement Division of the Fish and Wildlife Service. I know of no part of the Federal Government more sincerely interested in carrying out its duties or more courageous in tackling difficult and dangerous tasks in tracking down criminal violators than this Division. Nevertheless, it has not been able to enforce the Lacey Act to the extent which is absolutely necessary in order to create an effective deterrent against robbers whose misdeeds are far worse than thieves who merely steal money. These people are guilty of robbing nature and destroying irreplaceable world treasures. They must be stopped.

I am heartened by the inclusion in the Interior Appropriations Bill, recently passed by the House Subcommittee of funds for 20 additional agents to carry out this essential work. We earnestly hope that the Senate Appropriations Bill will also include the $1.4 million necessary to put these agents into the field. Such an expenditure will more than pay for itself by helping to cut off the illegal trade which is a drain on our Treasury and the Treasuries of other nations from which the contraband wildlife and wildlife products are poached and smuggled. I urge this subcommittee, which understands the problem in depth, to recommend this funding to the Appropriations Committee.

The Humane Shipment provision in the 1981 Lacey Act amendments changed the responsible agency from Treasury to Interior "within one hundred and eighty days of enactment." The change was made because Treasury had shown so little interest. So far, we seem only to have gone from the frying pan into the fire, for no regulations under this section have yet been promulgated by Interior despite the clear need for them.

would submit photographs of some of the unfortunate monkeys dead on arrival at New York's JFK Airport. At the present time, lacking the Humane Shipment regulations, FWS cases are often prosecuted under other laws. We strongly urge that the regulations for humane treatment of animals subject to Lacey Act requirements be completed promptly, distributed to all the ports of entry and that directives for their application be issued so that agents and inspectors realize the importance of enforcing them strictly.

Karl Mainer at Kennedy Airport deserves particular praise for his devoted efforts to stop shipping cruelty. In preparing this testimony I wanted to check some facts with him and found he has been transferred to Buffalo. I hope agents with equally serious concern for the welfare of animals will take his place at JFK where so many live animals enter our country and where I personally have observed callous mistreatment of hundreds of incoming primates for medical research in years past.

This April I visited JFK and the Port of Newark and talked with FWS Agents and Inspectors and Customs Agents in order to learn about the way in which wildlife laws at ports of entry are enforced.

During our visit I observed three monkeys that were being exported on a Lufthansa flight. Though the crate in which they were held was better constructed than those I observed at the time of massive monkey imports from India thirty years ago, the same callous attitude on the part of airline personnel was evident. The FWS inspector politely requested that the monkeys be moved from the frigid warehouse into the warm room Lufthansa has available for animal shipments. Even after a second request while we hovered about, our feet getting colder and colder, the Lufthansa men were supercilious. Finally I approached them aggressively and threatened to make trouble for them if they didn't move the monkeys into a warm area for their three-hour wait for the flight. Then, and only then, did they move the monkeys.

With all primates on Appendix I or II of the Convention on International Trade of Endangered Species of Wild Fauna and Flora the price of each one has risen by several hundred or even thousand percent, yet expensive though their loss would be, the dangerous chilling these tropical animals were undergoing at JFK was observed only because we happened to be visiting. Unfortunately, the Lacey Act does not apply to export, so the FWS inspector had no legal authority to require action which the airline should have taken without urging. At least we <u>can</u> require decent treatment of incoming animals if the Humane Shipment standards are promulgated and enforced by a sufficient number of inspectors and agents.

The Newark FWS office began less than two years ago, staffed by only two agents. It could easily absorb the Services of at least 10 more inspectors and two more agents. Help from

the well-staffed Customs Service would be much increased if there were enough FWS personnel available so that Customs inspectors would not have to hold up shipments waiting for a FWS employee to come to answer their questions about wildlife shipments on which they needed expert advice.

Unless you've visited container warehouses the enormity of the problem of keeping surveillance over this form of commercial transport is almost inconceivable. There are 324 container stations in the US that must be checked. They're about the length of a football field. As one looks down the gloomy corridors it seems almost hopeless to catch the smugglers who find containers such a bonanza for their illicit cargo. In 1982 approximately 1,900,000 individual containers of goods entered this country. They average more than 7 tons of cargo per container. The containers are often so closely packed that the only way inspections can be made is to unload them--heavy work for the longshoremen who have to be taken into account as the government tries to enforce the law.

On the day I visited, Fish and Wildlife Service Inspectors showed me some of the contraband they had seized. I had the opportunity of smelling the aromatic scent which is a traditional part of oriental medicine that features the horn of the endangered rhinoceros. Wrapped in tinsel paper, the pungent odor, unique in my experience, implanted itself immediately in my memory. We drove past huge container parking lots to the warehouse where a container suspected of holding products made from endangered species was supposed to be situated, but when we arrived, we were informed that the container in question had been "lost". Undaunted, the Customs Inspector told the trucker that he would impose a fine amounting to the value of the container's contents--roughly $29,000. These words had a magical effect, and the container was "found" and brought to the warehouse. I was unable to see it unloaded, however, because as soon as it was opened the longshoremen went off for their 11:30 a.m. lunch.

I looked at the manifest, which was made up of a list of Chinese crackers, joss sticks, and other legal imports. However, the telltale aroma issuing from the depths of the huge container strongly suggested that rhino horn pills were mixed in with the other goods. A check with FWS Agents the following day revealed that, indeed, rhinoceros horn, illegal seal products, and a strange concoction known as "Tiger Bone Wine" were all concealed within the container. Given the claims for the power of these medicaments, it is small wonder that wildlife criminals make every effort to get them past government agents. Take this list of "Indications" for Tiger Bone Wine, in each bottle of which a piece of bone can be seen: "General weakness, untimely senility, kidney trouble, neurasthenia, sores in waists and backs, overburdens of the brain, anaemia, dizziness, poor memory, involuntary perspiration, insomnia, pale faces, poor appetite."

This Chinese packaging has a Nineteenth Century look to it, with pictures of tigers and ancient sages, but Japanese merchandising is up-to-the-minute, with a small vial of round,

Each pill attached with sticky plastic to a pharmaceutical-type card which lists among its ingredients toad venom, dried bile, musk, pearl, Ginseng and rhinoceros horn--5 milligrams of the latter.

In 1983 nearly $700,000 worth of merchandise containing rhino or tiger products were seized at the Port of New York/Newark. Other seizures involved 12,576 cans of Green Sea Turtle soup, valued at $47,000, and 674 caiman hides declared as "common caiman" but actually from the Yacare, an endangered species: estimated value $30,000.

Smuggling of furs is not a one-way traffic. A shipment of American bobcat skins labeled as fox skins was recently apprehended on its way out of the country. Spotted cat fur is no longer popular in the United States, and only the boldest still sport a leopard coat acquired before the passage of the Endangered Species Act. However, in Japan, Germany, Italy, and France, the rage for spotted cats still continues, and the humble bobcat fills the role once held by the endangered cheetah and other members of the wildcat clan. FWS Agents are hampered because they may not "impede commerce" by asking what is in a "combined shipment" in a container. The regulations do not allow them to require identification of furs or leather, several varieties of which may be compressed into a single bale of fur. Those illegally taken are often shipped to Canada. Although bobcat skins "must" be tagged, they were found being sold in the New York fur district without any tags. Bobcats are extinct in 11 states, and Iowa, Indiana, and Ohio have placed them on their State Endangered Species Lists. The bobcat, lynx, and river otter furs exported from our country are caught using the cruel steel-jaw leghold trap whose use has been prohibited by more than 50 nations.

The killing of elephants for their ivory and the smuggling of the tusks presents a perennial problem. For example, a recent report shows that the tusks of 107,000 elephants were shipped out of the Sudan between 1979 and 1982. Between 1980 and the present, African elephant numbers have dropped an estimated 10%.

In conclusion, I hope this Subcommittee will look into the continuing flouting of the law through illegal mail shipments. Recent seizures of Burchell's zebra, black bear skin, stag horn, and buffalo horn being sent through the mail show that enforcement efforts provide the needed results. No wildlife shipments should be allowed to enter the country with a "Country Unknown" statement.

Increased enforcement capability and intensive efforts to make major cases to deter wildlife crime are needed. Only fear of arrest and loss of substantial funds will stop these criminals. Strong backing by the Senate for full enforcement of the Lacey Act and other applicable wildlife laws is essential.

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Transport Mortality and U.S. Importation
of Protected Birds

by Greta Nilsson

I am presently conducting a research project on bird importation. Quarantine forms (17-13) were obtained for this study from the Department of Agriculture for the period 1980-1983 to determine mortality and species of birds being imported into the United States. This study is being conducted for humane and conservation purposes. Some Fish and Wildlife Service entry forms (3-177) have also been obtained, but not all forms filed during the 1980-1983 period; I am in the process of obtaining the latter forms to compare them with the mortality forms. The information presented here therefore is preliminary.

The volume of birds entering this country is immense: Just since 1930, nearly three million birds have been imported, the majority wild-caught. All legally imported birds spend at least 30 days in U.S. Department of Agriculture quarantine stations. The Fish and Wildlife Service is informed of all incoming shipments of birds several hours prior to their arrival for inspection. In practice, very few flights are met by Fish and Wildlife Service personnel, either because there is not sufficient staff, or because the flights arrive at night or on weekends when they are not on duty. Attached are several examples of the quarantine forms which list the arrival flight and whether Fish and Wildlife Service agents were present - most note that the Fish and Wildlife Service did not inspect the shipment. The importer of birds must file a 3-177 form for the Fish and Wildlife Service describing the numbers and species of birds and their countries of origin. In addition, the importer must attest that the birds were not taken contrary to any foreign law as noted on the 3-177 form. Present regulations do not require filing of 3-177 forms

upon importation of wildlife. Therefore some of these forms are filed many days or weeks after importation and some are never filed at all. The 3-177 forms I examined showed that only 3 of 9 were dated the same day as the birds entered the country. One was dated the day the birds were released from quarantine. What this means is that if Fish and Wildlife Service personnel do not actually see the birds imported on entry, or receive the 3-177 forms well before their release from quarantine, seizure or enforcement of the Lacey Act and other laws is difficult if not impossible. Also, there are cases in which importers do not file accurate forms, omitting some species that were recorded on quarantine forms. Attached is an example of such an omission.

There are two major problem areas which need further regulations and funding with regard to bird importations, both relating to the Lacey Act. First the large number of birds arriving dead at ports of entry and second, the importation of birds protected in their countries of origin.

Transit Mortality

The U.S. Department of Agriculture and the Fish and Wildlife Service should work more closely in coordinating information on bird imports. The number of birds received dead on arrival should be communicated to the Fish and Wildlife Service within a few days of shipment entry when no F&W personnel are able to inspect shipments on arrival.

The Lacey Act's provision for prosecution of shipments of wildlife with a "substantial ratio of dead and dying" animals is at best difficult to enforce, partly due to the vague wording and partly to the failure of the Lacey Act to specify the party legally responsible for such mortality. In spite of this the Fish and Wildlife Service has prosecuted several cases of bird mortality, including one in which 468 African Gray Parrots of a lot of 750 arrived dead in September, 1982. This is only the tip of the iceberg however. In the four years since 1980, 148,892 birds arrived dead at U.S. ports of entry. Attached is a list of some shipments showing

mortalities of 40% or more on arrival. The list shows a large number of psittacines because these birds are usually listed by species on quarantine forms while finches and other birds are often listed in general terms, so that while an entire lot of a certain type of finch may arrive dead, it will not be specifically listed on quarantine sheets. The major problems in transit appear to be stress-related and delays when being transshipped which can result in birds being without food or water for many hours if not days. The small birds are especially vulnerable to the stress of transit and related noise, crowding and inadequate crating. The finches and tanagers can become dehydrated very quickly because of their small size, and often will not recover even if provided water on arrival. The guidelines set up by the International Air Transport Association for transport and animals are often not followed by shippers. The resultant crowding and flimsy crating can spell death for thousands of these birds. If importers supplied all exporters with copies of these guidelines and ordered only from those exporters that complied, the death rate would be far lower. Many exporters do not seem to be aware of the special requirements of the birds that they ship, having bought the birds from middle-men who in turn buy from those who capture the birds. The capture methods often include mist netting which will entrap any bird that flies into it, and the bird trapper merely sells these birds to tradesmen without knowing the birds species or their diets.

The airlines often are at fault in failing to open air vents in the hold or allowing too many birds to be loaded with resultant crowding and asphyxiation. Just a few weeks ago, a shipment of psittacines arrived from Argentina with 1438 dead conures of a total 3334 birds. The importer consulted a veterinarian who said that the birds appeared to have died from suffocation in the hold, since the air vents in the cargo section were closed throughout the flight.

In order to address this situation, Fish and Wildlife Service staff have been formulating revised regulations for several years which would more clearly define "substantial ratio" and assign responsibility of these deaths for legal prosecution. These regulations should be proposed by the Fish and Wildlife Service without further delay.

Importation of Protected Species

Of the millions of birds of diverse species entering the country, a sizeable number of birds were taken in contravention of the laws of foreign countries. These birds are usually exported from countries other than their native ones, with Belgium being the major culprit in the transshipment problem. Even though the 3-177 forms clearly require country of origin rather than country of export, the forms examined usually listed only the export country. This is an enforcement problem that needs to be addressed by the Fish and Wildlife Service. In some cases, importers do not know the origin country, if a species is of wide distribution, since they buy directly from some exporter countries such as Belgium, Singapore, Hong Kong and West Germany. Until last month, Bolivia was the major transshipper in South America, but that country has banned all bird exports for one year. It is known that large numbers of protected birds are smuggled from country to country with no way to prove actual origin if the species' ranges encompass large areas including many countries. The Scarlet Macaw, for example, ranges from southern Mexico to Bolivia and Brazil; it is protected in many of the countries - Mexico, Costa Rica, Panama, Colombia, Venezuela, and Brazil - but not in Bolivia, Honduras or El Salvador. Therefore Scarlet Macaws exported from these latter countries may or may not actually originate there, leaving enforcement officers helpless to prosecute such cases in which birds are thought to have been illegally captured.

Only when a bird species is native to a country or countries that prohibit commercial exportation of birds or protect that particular

species can one be sure of violation of foreign law. The Palm Cockatoo, for example, a large black parrot greatly coveted by bird collectors, lives in New Guinea, neighboring northern Australia and a few nearby islands. It is protected by all three countries: Indonesia, Papua New Guinea and Australia, and yet hundreds are illegally shipped worldwide each year. The Fish and Wildlife Service has enforced the Lacey Act with regard to the Palm Cockatoo, by making numerous seizures, the most recent being 120 birds imported from the Philippines and Malaysia in December, 1983. Other lesser known/protected birds, however, are being imported into the United States from their native countries. Brazil bans commercial exportation of its birds, but its large borders prevent adequate policing. The Hyacinth Macaw, largest of all parrots, along with other parrots, conures, guans and numerous species, have been exported through Bolivia to the U.S. and Europe in large numbers. Some of these birds are found only in Brazil, making enforcement of Lacey Act regulations less complicated. There have been very few seizures, however, and the problem appears to be that insufficient personnel exist to carefully monitor imports, examine and compare U.S. Department of Agriculture quarantine forms, and thereby enforce the laws of other countries. Attached is a list of over 6,000 birds protected throughout their ranges which I found listed in U.S.D.A. quarantine forms. This is a very minimum number which would be far greater if I had copies of all the 3-177 forms filed on birds imported in this period. Many of the quarantine forms list birds as "finches" or "parrots" without their full common or scientific names. This transshipment is of great concern to several countries, especially Brazil and Australia, who have made formal requests for information on species entering the U.S. from their countries.

Obviously, the task is enormous when one considers the number of birds imported, but it would be possible to catch many of these illegal imports if shipments were examined on entry into the country and if

3-177 forms were filed upon entry. The Fish and Wildlife Service personnel would then have 30 days or more to examine the forms and ascertain legality of shipments. A reference book such as Clement's Birds of the World: A Checklist, which lists all birds species of the world and their distributions, should be available to all import personnel to make their task easier.

Another problem inherent in the present system of bird importation is that many importers claim that protected birds they imported were raised in captivity. It is possible to differentiate captive-bred birds from wild-caught ones by the use of closed bands. These bands can only be attached before the bird is two weeks old. Theoretically they could be placed on wild-caught nestling birds, but special numbering systems and proof of breeding facilities could screen out such cases.

The continued importation of protected birds from countries such as Singapore, Belgium and West Germany should be stopped by requiring certificates of origin which could be verified by contacting the origin country, especially if that country was a CITES member.

It is recommended that:

1. U.S. Fish and Wildlife Service personnel be contacted by U.S.D.A. or vice-versa within days upon receiving notification of a bird shipment to learn the dead on arrival figures. Ideally, the number of import agents should be increased dramatically so that each shipment could be examined upon importation.

2. Humane regulations pertaining to transport mortality should be promulgated immediately to curtail the present unacceptably high numbers of birds found dead on arrival at U.S. ports of entry.

3. 3-177 forms should be required to be filed the day birds are imported and examined by Fish and Wildlife personnel carefully for the presence of protected species well before the birds are released from quarantine.

4. Closed bands should be required for all captive-bred birds entering the country except canaries, budgerigars, cockatiels and Zebra finches, all species bred in large numbers in captivity and not traded in their wild forms.

5. All birds imported from countries to which they are not native should be accompanied by certificates of origin from their native countries readily verifiable by import personnel.

6. U.S. Department of Agriculture's Animal and Plant Inspection Service should send quarantine forms 17-13 to local Fish and Wildlife personnel when birds are released from quarantine so that species and mortality can be verified and entered onto the 3-177. At present, the 3-177's usually list the birds imported without noting those that were dead on arrival or that died in quarantine.

7. Copies of foreign laws should be maintained at all ports of entry provided by the central office of the Fish and Wildlife Service's law enforcement division in Washington, DC. In several recent instances, the fact that such laws were not in possession of import agents has meant that foreign laws were not enforced. Paraguay, for example, prohibited all wildlife exports in 1977, yet did not enforce its own law and continued to export birds. Copies of their law were made available to import agents after several years of illegal imports, and shipments began to be refused entry. Paraguay then ceased shipping birds to the U.S. Likewise, Indonesia protected the Sulphur-crested Cockatoo in 1972 but until the law was translated by Justice Department lawyers several years later, these birds continued to be imported; as a matter of fact they have not been seized in many instances (see attached list). The computer system of the Fish and Wildlife Service which enters imports directly upon receipt of the 3-177's should now alert personnel in the Washington, DC office of any illegal imports.

Moreover, a computer listing of foreign laws is maintained by the International Union for the Conservation of Nature (IUCN) at their headquarters in Switzerland and a cooperative exchange of legal information between Fish and Wildlife Service and the IUCN could facilitate enforcement of foreign laws.

8. Consideration should be given to the possibility of permitting only non-commercial and captive-bred birds to enter the country. The trade in wild birds involves huge mortality from capture to retail sale and beyond, and many birds have become rare as a direct result of the trade. The United States condones the trade by continuing to allow imports of wild birds. Even strict enforcement of foreign laws will not end transshipment of protected birds unless trade bans are enacted by nearly every country in the world. The costs of inspection and prosecution of the Lacey Act are borne by the American taxpayer allowing bird dealers to become wealthy at the direct expense of the taxpayer and the world's bird species.

[illegible]

Transport Mortality - Dead on Arrival

Data obtained from U.S. Department of Agriculture forms 17-13 which record the mortality on arrival and during quarantine of all imported birds. The forms were obtained under the Freedom of Information Act.

Date	Species	Number Arrived	Number DOA	% Mortality	Exporting Country	Port of Entry
2/[illegible]/80	Red Bishop Finches	380	269	71%	Zimbabwe	Miami
3/20/80	Conures	904	435	48%	Argentina	NY
7/14/80	Severe Macaws	106	69	65%	Bolivia	Miami
9/23/80	Mitred Conures	500	254	51%	Bolivia	Miami
9/23/80	Yellowmared Parrots	50	32	64%	Bolivia	Miami
11/4/80	Comb-crested Jacanas	32	26	81%	Bolivia	LA
12/20/80	Mulga Parrots	44	44	100%	S. Africa	Miami
1/31/81	Dusky-headed Conure	1036	584	56%	Bolivia	LA
"	Blueheaded Parrots	111	54	47%	"	"
"	Red-shouldered Macaws	130	115	89%	"	"
"	Yellow-collared Macaws	241	129	54%	"	"
"	Green-winged Macaws	8	8	100%	"	"
"	Blue-fronted Parrots	13	13	100%	"	"
"	Blue-rumped Parrotlets	45	45	100%	"	"
"	White-bellied Caiques	25	25	100%	"	"
4/[illegible]/81	Flycatchers	5	5	100%	W. Germany	LA
4/16/81	Lovebirds	32	18	56%	Belgium	Miami
6/25/81	Fire Finches	1000	911	91%	Senegal	LA
8/20/81	Lovebirds	170	78	46%	Tanzania	Chi.
10/7/81	Fire Finches	300	181	60%	Tanzania	Miami
12/22/81	Toco Toucans	238	157	66%	Bolivia	SF
1/11/82	Yellow-collared Macaws	200	97	49%	Bolivia	Miami
1/21/82	Grey Singing Finches	125	57	46%	Senegal	Miami
3/18/82	Finches 24,000		12,304*	51%	Senegal	Chi.
4/19/82	Green-cheeked Conures	112	51	46%	Bolivia	SF
"	Mitred Conures	46	25	54%	"	"
4/21/82	White-eyed Conures	49	23	47%	Bolivia	Miami
5/2/82	Conures	3467	1448	42%	Argentina	Chi.
6/22/82	Patagonian Conures	1551	696	45%	Argentina	LA
6/23/82	Canary-winged Parakeets	56	44	79%	Bolivia	Miami
"	Scaly-headed Parrots	42	37	88%	"	"
"	Green-cheeked Conures	6	4	67%	"	"
7/13/82	Mitred Conures	86	40	46%	Bolivia	Texas
7/19/82	Red-rumped Parakeets	49	44	90%	S. Africa	Miami
7/20/82	Canary-winged Parakeet	278	171	62%	Bolivia	Miami
8/4/82	Blue-winged Parrotlet	76	56	74%	Argentina	Miami
8/5/82	Patagonian Conures	916	465	51%	Argentina	NY
8/11/82	Mitred Conures	1200	635	53%	Bolivia	Miami
"	Canary-winged Parakeet	200	185	93%	"	"
8/25/82	Parakeets	120	108	90%	?	NY
9/8/82	Mitred Conures	1050	475	45%	Bolivia	Miami

*A total of 20,829 birds in this shipment were Dead on Arrival of the 60,000+ birds imported in three separate lots from Senegal and Mali

[illegible] Mortality of Imported Wild Birds

Date	Species	Number Arrived	Number DOA	% Mortality	Export Country	Entry Port
9/17/82	Grey Parrots	750	468*	62%	Senegal	NY
9/29/82	Mitred Conures	1413	807	57%	Bolivia	Miami
9/30/82	Red-masked Conures	1881	792	42%	Peru	Miami
11/11/82	White-bellied Caique	140	74	53%	Bolivia	Miami
5/5/83	Pekin Robins	800	407	51%	Belgium	LA
6/27/83	Red-breasted Geese	30	16	53%	Netherlands	NY
7/24/83	Mitred Conures	199	147	74%	Bolivia	LA
8/27/83	Mitred Conures	1862	1168	63%	Bolivia	Miami
"	Blue-crowned Conures	854	627	73%	"	"
9/27/83	Nanday Conures	3624	1648	46%	Argentina	LA
"	Blue-crowned Conures	1191	654	55%	"	"

*This mortality resulted in a case against the airline under the "substantial ratio of dead and dying birds" portion of the Lacey Act

Discussion: Details on mortality were available in only one shipment, conures which arrived from Argentina May 2, 1982. The importer noted on the mortality sheet that the 1,448 dead conures of 3,467 birds died because the shipment was diverted first to Mexico City and then to London, the birds going days without food or water. Global Bird Imports, the importer, commented: "All the birds in the top two layers were dead and most in level three were also dead". These crates are stacked like cordwood in airliner holds and are often the last to be unloaded after the rest of the cargo. Note also that the majority of high mortality shipments occurred in summer months when temperatures are high. If finches were listed by species, there would probably be a large number of 100% mortalities: these figures are biased somewhat because of the method of recording birds on the import forms, with parrots listed by most importers by species and finches listed as a group.

United States
Importation of Protected Birds 1980-1983
Figures obtained from U.S. Department of Agriculture Forms 17-13 and U.S. Department of Interior Forms 3-177

All birds unless otherwise noted are native to the country of origin listed at left, and are native to only that country.

Brazil - All commercial exportation of birds is prohibited

- White-crested Guan, Penelopa pileata 3 birds imported in 1982 from Belgium
- Hyacinth Macaw, Anodorhynchus hyacinthinus (major population in Brazil with less than 100 birds in adjacent Bolivia according to 1977 survey): imports:

1980	30	Exporting Countries:	Bolivia: 1273 birds
1981	390		Paraguay: 100 birds
1982	522		
1983	431		
	1373 Total		

- Golden-capped Conure, Aratinga auricapilla- Birds Imported:

1980	119	Exporting Countries:	Belgium: 36
1981	322		Bolivia: 106
1982	508 Total: 949		S. Africa: 16

- Jenday Conure, Aratinga jendaya - Birds Imported :

1980	207	Exporting Countries:	Argentina: 750
1981	155		Belgium: 177
1982	13		Paraguay: 142
1983	732		S. Africa: 38
	1107 Total		

- Cactus Conure, Aratinga cactorum - Birds Imported:
  1980 50 Exporting Country: Bolivia
- White-eared Conure, Pyrrhura leucotis - (This species is also native to Venezuela which
  1981 42 exported from Bolivia prohibits commercial exportation of birds)
- Yellow-faced Amazon, Amazona xanthops - Birds Imported:

1981	2	Exporting Countries:	Argentina: 4
1982	4		Bolivia: 2
	6		

- White-naped Jay, Cyanocorax cyanopogon - Birds Imported:

1981	14	Exporting Country:	Bolivia
1983	30		
	44 Total		

Ecuador - A list of species permitted to be exported was published in their official register in 1980; It prohibits export of all macaws, and lists 38 species and genera of birds which may be exported. The following birds are not officially listed as permitted to be exported, but were all exported directly from Ecuador between 1981 and 1983.

- Blue and Yellow Macaw, Ara ararauna - Birds Imported:
  1983 3
- Scarlet Macaw, Ara macao - Birds Imported:
  1983: 9
- Green-winged Macaw, Ara chloroptera - Birds Imported:
  1983 2
- Chestnut-fronted Macaw, Ara severa - Birds Imported:
  1983 1
- Red-masked Conure, Aratinga erythrogenys - Birds Imported:
  1982 190
  1983 105 Total: 295
- Maroon-bellied Conure, Pyrrhura frontalis - Birds Imported:
  1983 1
- Green-cheeked Conure, Pyrrhura molinae - Birds Imported:
  1983 15
- Blue-winged Parrotlet, Forpus xanthopterygius - Birds Imported:
  1982 97
- Black-headed Caique, Pionites melanocephala - Birds Imported:
  1983 16
- Rose-faced Parrot, Pionopsitta pulchra - Birds Imported:
  1983 1
- Scaly-headed Parrot, Pionus maximiliani - Birds Imported:
  1982 35
- White-headed Parrot, Pionus seniloides - Birds Imported:
  1983 9
- Orange-winged Parrot, Amazona amazonica - Birds Imported:
  1983 3
- Mealy Amazon, Amazona farinosa - Birds Imported:
  1983 4
- Amazons - Yellow-headed and Orange Winged, Amazona ochrocephala and A. amazonica
  1983 5

Ecuador (continued)

- Hummingbirds, species unknown - Birds Imported:
  1983 147 (of which 121 died)
- Toucan Barbet, Semnornis ramphastinus - Birds Imported:
  1983 6
- Chestnut-mandibled Toucan, Ramphastos swainsonii - Birds Imported:
  1982 8
  1983 54
  62 Total
- Cuvier's Toucan, Ramphastos cuvieri - Birds Imported
  1982 11
  1983 4
  Total: 15

Australia - all comercial exportation of birds is prohibited

- Scaly-breasted Lorikeet, Trichoglossus chlorolepidotus - Birds Imported:
  1981 10
  Exporting Country: Belgium
- Musk Lorikeet, Glossopsitta concinna - Birds Imported:
  1981 2
  Exporting Country: Belgium
- Rose-breasted Cockatoo, Eolophus roseicapillus - Birds Imported:
  1980 20
  1981 141
  1982 114
  1983 16
  291 Total
  Exporting Countries: Belgium: 197
  Philippines: 8
  South Africa: 30
  West Germany: 33
  Unknown: 23
- Major Mitchell's Cockatoo, Cacatua leadbeateri - Birds Imported:
  1981 19
  1982 4 Total: 23
  Exporting Countries: Belgium: 19
  West Germany: 4
- Long-billed Corella, Cacatua tenuirostris - Birds Imported:
  1981 7
  Exporting Country: Belgium
- Australian King Parrot, Alisterus scapularis - Birds Imported:
  1980 6
  1981 16
  1983 2
  24 Total
  Exporting Countries: Belgium: 16
  Unknown: 8
- Kookaburra, Dacelo novaeguiniae - Birds Imported:
  1982 4

Indonesia - A number of bird species have been protected since 1975 and 1978 including all Hornbills, the Eclectus Parrot, the Greater Sulphur-created Cockatoo and some 100 other species

- Buton Hornbill, Aceros cassidix - Birds Imported:
  1982 1
  Exporting Country: Indonesia

- Eclectus Parrot, Eclectus roratus (native to Indonesia, New Guinea, Australia and some Pacific islands; protected throughout its range)

1980	210
1981	33
1982	136
1983	83
	462 Total

Exporting Countries:
Austria: 2
Belgium: 45
Malaysia: 157
Philippines: 28
Singapore: 138
Solomon Islands: 29
South Africa: 16
Sweden: 10
Thailand: 25
West Germany: 12

- Palm Cockatoo, Probosciger aterrimus (native to Indonesia, Papua New Guinea and Australia; protected throughout its range)
  1983 120 - All Birds were Seized by the Fish & Wildlife Service
  Exporting Countries: Philippines : 20
  Singapore: 100

- Greater Sulphur-crested Cockatoo, Cacatua galerita (native to Indonesia, Papua New Guinea and Australia; protected in all three)

1980	393
1981	160
1982	49
1983	87
	689 Total

Exporting Countries:
Belgium: 190
Malaysia: 18
Philippines: 88
Singapore: 267
Sweden: 119
Thailand: 7

India and Sri Lanka - All birds are protected from commercial exportation in Sri Lanka and India has a list of species which may be exported, not including the species below)

- Vernal Hanging Parrot, Loriculus vernalis -Birds Imported:
  1982 108
  Exporting Country: Thailand (noted on import form that the birds were Indian)

- Yellow-fronted Barbet, Megalaima flavifrons (native only to Sri Lanka)
  1982 11
  Exporting Country: Belgium

Papua New Guinea - All birds are protected from commercial exploitation; unfortunately, the western half of the island, West Irian, governed by Indonesia, protects only a small portion of the birdlife. Black-capped Lories are protected by both Papua New Guinea and Indonesia.

o Black-capped Lory, Lorius lory (native to Indonesia and Papua New Guinea) - Birds Imported:

1982 6 Exporting Country: Malaysia

c Stella's Lory, Charmosyna papou stellae (This subspecies of the Papua Lory, sometimes considered a full species, is native only to the Papua portion of New Guinea)

Birds Imported:

1981 5
1982 62
1983 33
100 Total

Exporting Countries: Belgium: 5
Singapore: 12
Indonesia: 83

Total Birds Listed Here: 6145

Note: This list does not include the thousands of parakeets and finches that importers claim to be captive-bred. Most of these are of Australian origin and may well include wild-caught birds.

TESTIMONY OF

RICHARD L. HUFFMAN

COUNSEL TO THE REPTILE SKIN INDUSTRY

TRADE ASSOCIATION BEFORE THE SENATE SUBCOMMITTEE

ON ENVIRONMENTAL POLLUTION REGARDING OVERSIGHT

HEARINGS ON ENFORCEMENT OF THE LACEY ACT

UNITED STATES SENATE

WASHINGTON D.C.

JUNE 26, 1984

Mr. Chairman and Members of the Subcommittee:

I am Richard L. Huffman, counsel to the Reptile Skin Industry Trade Association, a non-profit organization formed to represent the interests of importers, tanners, fabricators, and retailers of reptile and other exotic leathers. Its membership is composed of companies which engage in all or some of those businesses.

We support strong enforcement of the Lacey Act. We believe that its use has been ineffective and misguided as presently applied to trade in imported leathers.

Our premise is that the Lacey Act was intended first to protect wildlife and second, coupled with the Endangered Species Act and the CITES treaty, to preserve populations of commercially valuable plants and animals for use by legitimate business. Legitimate American business is now being destroyed by a system of smuggling which is not deterred, but rather enhanced, by American laws and law enforcement.

We are concerned about securing substantial, stable populations of the South American reptile known as Caiman. We cannot now import Caiman hides because:

a) the Caiman Jacare is listed as endangered by U.S. Fish & Wildlife Service and is therefore illegal to import into the United States.

b) importation of the hides of Caiman Crocodilus Crocodilus (hereinafter Crocodilus) is monopolized by the Europeans and Japanese because of historical reasons and South American laws. The combination of these two factors has resulted in a flood of Jacare and Crocodilus products to the United States market from Japan and Europe injuring both American industry and the species.

The hides of various species of Caiman have for decades been brought into the United States for manufacture into belts, bags and shoes. At present, some of the subspecies of Caiman are endangered while others continue to be abundant. Over the past twenty years, the two species, Jacare and Crocodilus, commonly have been used for these commercial purposes. The finished hides of the two Caimans are difficult for experts to distinguish. When the finished hides are cut up into small leather goods, even the most knowledgeable expert cannot distinguish between them. Both species live near, or in, the Amazon River Basin countries and their neighbors, Brazil, Venezuela, Paraguay, Bolivia, the Guyanas, Surinam and Colombia. Some of those countries, such as Brazil, prohibit export of all Caiman hides and have for years. Others such as Paraguay, Colombia and Bolivia have laws or regulations which have changed frequently.

Once legally exported from these countries the Jacare hide

may be traded and imported for commercial purposes anywhere in the world except the United States. The Crocodilus hide may be traded and used for commercial purposes in the United States as well as the rest of the world.

Brazil's restrictive export laws have led to the smuggling of a substantial number of Caiman hides of both species from Brazil to its neighbors. These hides are usually smuggled by native Indians in a raw, untanned state, without papers. There seems little, if anything, the Lacey Act or any other law can effectively do to control smuggling at that level. The tanners in Bolivia, Paraguay, French Guyana and other South American countries receive the hides from the native Indians, but they are not skilled tanners, and they cannot provide a product which could simply be cut and made into finished goods. Instead they half finish the hide, a process which puts it in a condition called "crusted". The crusted hides are sold and shipped to tanners in France, Japan, Germany and Italy who complete the tanning process and sell the finished skins to the United States or foreign fabricator. Because of the problems described here, the United States tanners who have processed Caiman skins in the past have sharply cut back their number of employees or closed.

While smuggling of skins between South American countries cannot be controlled, smuggling of the finished product into the

United States could be controlled, but is not. Because it is very difficult to distinguish between finished Jacare and Crocodilus hides, foreign tanners and exporters often confuse the two, and simply label all Caiman hides and products destined for the United States as Crocodilus. Depending upon the company and the diligence and ability of its employees, in any particular shipment labeled "Caiman" the hides may be correctly identified, partially misidentified, or entirely misidentified. If a shipment is partially misidentified, the error may be an honest one because a company which does not engage in a substantial business in the United States normally would not segregate these hides and has little reason to develop the ability to do so. Often, however, the misidentification is deliberate, especially if the company is a substantial exporter to the United States or when the Jacare hide has been made into a belt, handbag, wallet or other small leather good which U.S. Fish and Wildlife employees would never be able to correctly identify.

To the best of our knowledge these foreign shippers have not been prosecuted under the Lacey Act. Instead, only occasional, seemingly random, shipments of hides have been seized and forfeited. When this occurs, no fine or criminal sanction is imposed upon the shipper. Rather a civil penalty is imposed upon the American importer.

The ineffectiveness of the Lacey Act in this system is illustrated first by the complete inability of the United States Fish and Wildlife Service to stop the import of finished goods manufactured from Jacare but labeled Crocodilus. Second, the system has little effect upon the smuggling of hides into the United States, as the enforcement division is unable to locate and seize a shipment of hides even when confidential information is given to them identifying the foreign exporter, the American importer, the customs broker and the date of the shipment.

This ineffectiveness has yielded extremely unfortunate results both for American business and truly endangered Caiman species. The American importer and fabricator is effectively prevented from buying any Caiman hides including Crocodilus. Since the American company must rely on the foreign exporters ability and honesty in segregating the Jacare hide from the Crocodilus hide, and since both these qualities are suspect, the importation of Caiman Crocodilus hide has become a form of Russian Roulette for the importer in which any given shipment may or may not be seized by U.S. Fish and Wildlife. While the foreign exporter may bear the loss of the shipped hides, the American importer of hides suffers other, substantial, losses. The American usually pays the air freight and the brokerage fees; the American is subjected to the imposition of a civil penalty by

U.S. Fish & Wildlife and, most seriously, the American cannot deliver the promised hides or products to his own customer, often losing the customer to foreign competition, which can readily import finished goods made from Jacare. Finally, the American may also lose the honest small foreign exporter as a source of any hides. The foreign company doesn't understand the actions of the United States Fish & Wildlife Service, blames the American importer, and refuses to supply hides of any species to the importer. As a result of all these losses there are now almost no importations of Crocodilus by legitimate American companies. This leaves the very large Caiman market entirely to the Japanese, Germans, and French, plus a few Italians and English.

The present law enforcement system also fails to protect several subspecies of Caiman, such as Melanosuchus Niger, which are truly endangered. Since the present system fosters the mislabeling and smuggling of finished Caiman products from Europe and Japan into the United States, it is all too easy for the hides of these endangered reptiles to become part of the illegal system.

We see no role for the Lacey Act to play in eliminating this system unless two changes are made in existing regulations:

A. Allow limited, small numbers of Jacare hides to be

imported into the United States. We do not believe this will have a negative effect on the Jacare population. Jacare probably should not be on the U.S. Endangered Species List at all. Apparently, it was put there through an error and now there is insufficient data to determine whether or not it should be removed. Most experts informally and "off the record" believe Jacare should not be on the endangered list. Our trade association has been urging a scientific study for three years and has finally obtained agreement for an international study of Caiman which will be conducted by the CITES Secretariat. We, the World Wildlife Fund, and others are now trying to raise money to support it. The study will last three years, at the end of which Jacare will either be downgraded on the U.S. Endangered Species List or raised to Appendix I on the CITES list. This proposed change in the regulations would only remain effective until the study is conducted.

B. Require that imported Jacare and Crocodilus hides and products either be tagged, as American alligator hides now are, or accompanied by numbered documents on special bonded paper, as the Swiss authorities have suggested.

These two changes should:

1) strengthen the economic value of Caiman which would encourage South American countries to preserve their habitats;

2) provide a worldwide control of the numbers taken each year, which would aid the maintenance of a stable population;

3) provide a carefully controlled, equitable system of distribution which would place American companies on an equal footing with foreign competition. This in turn should reduce smuggling by foreign companies and reduce the taking of the truly endangered subspecies of Caiman;

4) enable violations of the system to be easily detected. Offenders could then be readily subjected to the penalties provided by the Lacey Act, further discouraging smuggling and encouraging legitimate business.

Thank you for this opportunity to testify and for your consideration of the Reptile Skin Industry Trade Association's views.

Safari Club International

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June 25, 1984

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The Honorable John H. Chafee
Chairman
Subcommittee on Environmental Pollution
410 Senate Dirksen Office Building
Washington, D. C. 20510

Dear Senator Chafee:

I am writing to you on behalf of our client, the Safari Club International (SCI). As you know, SCI is an organization of sportsmen and women dedicated to the conservation of wildlife, the preservation of sport hunting as a wildlife management tool, and the protection of sport hunters' rights. With more than 75 chapters, SCI has an active membership core of 15,000 sportsmen, and with the affiliation of 28 state, regional, national and foreign sportsmen organizations, SCI represents a network of more than 900,000 hunter/conservationists.

This letter is in reference to the oversight hearing which is scheduled for tomorrow to review the implementation and enforcement of the Lacey Act Amendments of 1981. On behalf of the Safari Club International, I respectfully request that this statement be incorporated into the official hearing transcript.

As a tool to combat and stem the illegal commercial trade in wildlife parts and products, the Lacey Act is one of the pillars of this nation's commitment to wildlife protection and conservation. When the Lacey Act was last amended three years ago, the Safari Club International took an active role in ensuring that the then proposed legislation be properly targeted to the illegal wildlife traffickers, while, simultaneously, protecting the civil rights of the ordinary law-abiding sportsman who may find himself to have violated -- unintentionally, inadvertently, or without criminal intent -- an underlying wildlife law or game regulation.

As you are well aware, the Safari Club International and its chapters are active participants in the conservation of wildlife and have helped to underwrite financially many of the anti-poaching programs and projects throughout this

country and around the globe. In fact, in its short thirteen year history, the Safari Club International has contributed more than $6.5 million to a variety of wildlife conservation and anti-poaching projects. As a further demonstration of its commitment, the Safari Club International has proudly endorsed the recently launched campaign (led by the World Wildlife Fund) to control the illegal commercial trade in wildlife. (A copy of the statement endorsing such campaign is attached hereto).

We are all in complete accord that the largescale illegal wildlife trade and organized wanton acts of wildlife depredation must be eliminated, and that law enforcement is an integral component in such an effort. Inasmuch, the Safari Club International supports the Lacey Act as such a tool.

However, for purposes of this and other hearings, it is absolutely essential that this Subcommittee distinguish between the illegal profit-seeking poachers and marketeers who have no regard for wildlife or the laws designed to protect it, and the American sportsman who, more than any other, has contributed to the protection and conservation of our wonderful wildlife resources. Any legislation which may arise from this hearing must bear in mind this critical and all-important distinction and must ensure that any new proposal will not jeopardize the rights of the ordinary law-abiding American sportsman/conservationist.

Thank you.

Sincerely,

Ben Bolusky

Benjamin C. Bolusky
Federal Liaison

BCB:sjs

Safari Club International

(A NEVADA CORPORATION)

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STATEMENT
BY
LESTER GRANT
INCOMING PRESIDENT-ELECT
MAY 22, 1984

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Your Royal Highness, ladies and gentlemen, I am very pleased to represent the Safari Club International here today. I am doubly pleased to announce that the Safari Club International is joining with the World Wildlife Fund and these other distinguished organizations in launching a new campaign to control, and eventually bring to a halt, the illegal trafficking in wildlife parts and products which, unfortunately, is so widespread throughout the world today.

Aside from the continuing loss of habitat, which remains of monumental concern to the Safari Club International, the greatest danger to wildlife is found in the illegal profit-seeking poachers and marketeers who have no regard for wildlife or the laws designed to conserve and protect such resources.

The Safari Club International is committed and dedicated to the conservation of wildlife -- game and non-game animals alike. Perhaps the best means to conserve our wildlife populations is to actually crack down and eliminate the ongoing illegal trade.

No group has contributed more to the conservation and protection of the world's wildlife than the sportsman.

Closely regulated and monitored by wildlife departments in this country and throughout the world, sport hunting plays an immensely important role in conservation because sport hunting provides wildlife with a legitimate economic value and acts as an effective incentive for further conservation efforts. Sportsman-generated revenue underwrites much of the world's wildlife conservation programs and serves as a significant source of funds for law enforcement efforts. In fact, wildlife conservation and anti-poaching efforts in many foreign nations are almost solely dependent upon the revenues generated from well-regulated and managed sport hunting programs.

Since its founding in 1971, the Safari Club International and its chapters have contributed more than $6.5 million to a whole host of wildlife conservation, habitat preservation, and public education programs. We have long been involved in efforts to stamp out illegal wildlife trade. In the past, we have purchased four-wheel drive vehicles and sophisticated communications equipment for wildlife departments in such places as Mexico, Kenya, and the Sudan in an effort to intensify anti-poaching patrols and other wildlife law enforcement units. In addition, SCI and its chapters have helped to establish and continue to fund many of the anti-poaching hotlines operating in several States to which citizens report wildlife violators.

We are very proud of the continuing work that SCI has undertaken aimed at forcing illegal wildlife marketeers out of business. However, it is time that the peoples and governments of the world awaken to the need to redouble present efforts to assure the longterm conservation of our wonderful wildlife resources.

The Safari Club International wholeheartedly supports this campaign and we are eager to work with the World Wildlife Fund in this extraordinarily important endeavor.

With 75 chapters and the affiliation of 28 state, regional, national and foreign sportsman organizations, Safari Club International represents a network of more than 900,000 hunter/conservationists. We will work to rally these and other sportsmen of this nation and the world to embark together upon this new campaign to educate the public and intensify anti-poaching programs in a concerted effort to control the illegal wildlife trade.

As a result of this campaign under the leadership of the World Wildlife Fund, and with the cooperation of sportsman/hunter organizations spearheaded by the Safari Club International, wouldn't it be wonderful if illegal wildlife traffickers were to become the new endangered species. This worthy goal is shared by all true sportsmen/conservationists.

○